

United States 1076
Circuit Court of Appeals

For the Ninth Circuit.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, COATSFORD-
NEY LOGGING COMPANY, and SAGINAW TIMBER COMPANY,
Appellants,

vs.

DETROIT TRUST COMPANY and ALEXANDER McPHERSON, as
Trustees, and S. E. SLADE LUMBER COMPANY, WILLIAM T.
CAMERON, CAMERON-HOOVER LOGGING COMPANY, HUM-
TULIPS LOGGING COMPANY, FIRST FEDERAL TRUST COM-
PANY, and MILTON R. CLARK, Trustees, SLADE-WELLS LOG-
GING COMPANY,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the
Western District of Washington, Southern Division.

Filed

JAN 19 1917

F. D. Monckton,
Clerk.

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CAMERON, CAMERON-HOOVER LOGGING COMPANY, HUMPTULIPS
LOGGING COMPANY, FIRST FEDERAL TRUST COMPANY, and MILTON R. CLARK, Trustees, SLADE-WELLS LOGGING COMPANY,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Solicitors for the Appellants.

ZERA SNOW, Esquire, Northwestern Bank Building, Portland, Oregon;

WALLACE McCAMANT, Esquire, Northwestern Bank Bldg., Portland, Oregon;

EARL C. BRONAUGH, Esquire, Northwestern Bank Bldg., Portland, Oregon.

J. B. BRIDGES, Esquire, Aberdeen, Washington; and

THEODORE B. BRUENER, Esquire, Aberdeen, Washington,

Solicitors for the Appellees. [1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 67—IN EQUITY.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, et al.,
Defendants.

THE FIRST NATIONAL BANK OF SAN FRAN-
CISCO, COATS-FORDNEY LOGGING
COMPANY, and SAGINAW TIMBER
COMPANY,

Intervenors.

Stipulation as to Transcript of Record.

It is hereby stipulated by and between the appel-
lants and respondents herein that the following or-
ders, pleadings, papers and matters appearing of
record herein shall be incorporated into and consti-
tute the transcript on appeal in this cause, the par-
ties hereby waiving the filing by either party of a
praecipe therefor, but reserving to both appellants
and appellees the right to file a praecipe for a tran-
script of any additional matters appearing of record
that may be deemed by either of them to be mate-
rial for the purposes of determining said appeal, to
wit:

(The clerk, in lieu of a written transcript, may
forward a printed or other true copy of any of the

items hereinafter described as a part of the transcript.) [2]

1.

Copy of the Bill of Complaint in Foreclosure of the Detroit Trust Company and Alexander McPherson, trustees, in said equity cause No. 67.

2.

Petition of said plaintiffs for the appointment of a receiver of the mortgaged premises.

3.

Order of the Court entered in said cause August 4, 1916, appointing George L. McPherson as such receiver.

4.

Petition of said receiver for an order authorizing the making of a contract for the logging of the timber upon said mortgaged premises.

5.

Order entered upon said petition August 4, 1916, authorizing the receiver to enter into said contract.

6.

Petition of the First National Bank of San Francisco et al., asking the vacation of said orders and cancellation of said contract, filed herein August 14, 1916.

7.

The original opinion of the Court made and filed at the first hearing.

8.

Order of the Court granting a rehearing and permitting the said First National Bank et al., the appellants herein, leave to file an amended petition as

intervening defendants in said cause. [3]

9.

The amended petition of the First National Bank et al., appellants herein.

10.

The answer of the American National Bank of San Francisco et al.

11.

The order of the Court on said original and amended petitions of the First National Bank et al., appellants herein, made and entered in this cause on the 18th day of December, 1916.

12.

The journal entry of the Court regarding notice of appeal given in open court by the said appellants, the filing of their assignments of errors and fixing a cost bond, made and entered in said cause on the 18th of December, 1916.

13.

The assignments of errors made and filed in said cause by the appellants at the time of taking said appeal on the said 18th day of December, 1916.

14.

The bond for cost on said appeal filed in said cause on the 18th day of December, 1916.

15.

The agreed statement of the case.

SNOW, McCAMANT & BRONAUGH,
EARL C. BRONAUGH,
BRIDGES & BRUENER,

Attorneys for Appellees.

HUGHES, McMICKEN, DOVELL & RAM-
SEY and
E. C. HUGHES,
JOHN C. HOGAN,

Attorneys for Appellants. [4]

IN THE

DISTRICT COURT OF THE UNITED STATES.

FOR THE WESTERN DISTRICT OF WASHINGTON—
SOUTHERN DIVISION.

IN EQUITY—No. 67.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,

against

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON-HOOVER
LOGGING COMPANY, HUMPTULIPS
LOGGING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R.
CLARK TRUSTEES, SLADE-WELLS
LOGGING COMPANY,

Defendants.

Bill of Complaint for Foreclosure.

SIDNEY T. MILLER,
2148 Penobscot Building,
Detroit, Michigan.

WALLACE McCAMANT,
Northwestern Bank Building,
Portland, Oregon,

Solicitors and of Counsel for Plaintiff.

MILLER, SMITH, CANFIELD, PADDOCK & PERRY,
2148 Penobscot Building,
Detroit, Michigan.

SNOW, McCAMANT & BRONAUGH,
Northwestern Bank Building,
Portland, Oregon,
Solicitors for Plaintiff. [5]

*In the District Court of the United States for the
Western District of Washington, Southern Divi-
sion.*

IN EQUITY—No. 67.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,
against

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON-HOOVER
LOGGING COMPANY, HUMPTULIPS
LOGGING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R.
CLARK TRUSTEES, SLADE-WELLS
LOGGING COMPANY,

Defendants.

To the Honorable Judges of the District Court of the United States in and for the Western District of Washington, Southern Division:

Detroit Trust Company and Alexander McPherson, as Trustees, bring this their Bill of Complaint against S. E. Slade Lumber Company, William T. Cameron, Cameron-Hoover Logging Company, Humptulips Logging Company, First Federal Trust Company and Milton R. Clark, Trustees, and Slade-Wells Logging Company, and thereupon the plaintiffs complain and allege: [6]

First. The plaintiff, Detroit Trust Company, at all the times hereinafter mentioned was, and still is, a corporation organized and existing under the laws of the State of Michigan, and of no other State, having its office and principal place of business in the city of Detroit, Wayne County, Michigan, and is a citizen of the State of Michigan, and a resident of the city of Detroit in the county of Wayne and State of Michigan, and a resident of the Eastern District of Michigan. That at all the times hereinafter mentioned said plaintiff, Detroit Trust Company was, and now is, duly authorized and empowered under and by virtue of the laws of the State of Michigan and of Washington, and by its charter, to take and hold in trust the property transferred and conveyed to it upon the trusts hereinafter stated, and to execute and perform the trusts upon it imposed, under and by virtue of the terms and provisions of the mortgage hereinafter mentioned.

Second. At all the times hereinafter mentioned plaintiff, Alexander McPherson, was, and still is, a

citizen of the State of Michigan, and a resident of the city of Detroit in the county of Wayne in said State of Michigan, and a resident of the Eastern District of Michigan.

Third. At all the times hereinafter mentioned the defendant, S. E. Slade Lumber Company (hereinafter sometimes called "Lumber Company") was, and still is, a corporation organized and existing under the laws of the State of California, and of no other State, having its office and principal place of business in the city and county of San Francisco, State of California, and is a citizen of the State of California, and a resident of the city and county of San Francisco, State of California, and a resident of the Northern District of California. Said defendant, Lumber Company, at all the times hereinafter mentioned was, and still is, authorized by the laws of said States of California and of Washington, and by its charter, from time to time to borrow money for its lawful corporate purposes, to issue [7] and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for said purposes.

Fourth. That the defendant, William T. Cameron, is a citizen of the State of Washington and a resident of the city of Aberdeen in the county of Grays Harbor in said State of Washington and a resident of the Western District of Washington.

Fifth. That the defendant, Cameron-Hoover Logging Company, is a corporation organized and existing under the laws of the State of Washington,

and of no other State, having its office and principal place of business in the city of Aberdeen, Grays Harbor County, State of Washington, and is a citizen of the State of Washington, and a resident of the city of Aberdeen in the County of Grays Harbor, State of Washington, and a resident of the Western District of Washington.

Sixth. That the defendant, Humptulips Logging Company, is a corporation organized and existing under the laws of the State of Washington, and of no other State, having its office and principal place of business in the city of Aberdeen, Grays Harbor County, State of Washington, and is a citizen of the State of Washington and a resident of the city of Aberdeen in the county of Grays Harbor, State of Washington, and a resident of the Western District of Washington.

Seventh. That each of the defendants, First Federal Trust Company, joined as Trustee with Milton R. Clark and Slade-Wells Logging Company, is a corporation organized and existing under the laws of the State of California, having its office and principal place of business in the city and county of San Francisco, State of California, and is a citizen of the State of California, and a resident of the city and county of San Francisco, State of California, and a resident of the Northern District of California.
[8]

Eighth. That the defendant, Milton R. Clark, joined as Trustee with the First Federal Trust Company, is a citizen of the State of California and a resident of the city and County of San Francisco,

State of California, and a resident of the Northern District of California.

Ninth. That this is a suit in equity of a local nature and that the lands, premises and property involved therein lie wholly within the Southern Division of the Western District of Washington. That this suit is between citizens of different states. That the amount in controversy herein exceeds the sum of three thousand dollars (\$3,000), exclusive of interest and costs.

Tenth. Heretofore and on September 1st, 1910, the defendant, S. E. Slade Lumber Company, in the due exercise of the powers and authority by it in that behalf possessed, due corporate action having first been had for the purpose of borrowing money for the uses of said defendant Lumber Company, duly authorized the issue of its "First Mortgage Gold Bonds" (hereinafter called the "bonds") to the aggregate principal amount of one million dollars (\$1,000,000), bearing interest at the rate of six per cent (6%) per annum and duly resolved to secure the payment thereof by a first mortgage.

Eleventh. In pursuance of such resolution, and in the exercise of the lawful powers of such defendant Lumber Company, the officers of said Lumber Company, in its name and as its lawful corporate act pursuant to due and sufficient authority and approval as aforesaid, made and executed said bonds of the Lumber Company amounting in the aggregate to one million dollars (\$1,000,000) face value of principal, by which bonds said Lumber Company promised to pay on March 1st, 1911, and semi-

annually thereafter to and including September 1st, 1920, to the bearers thereof or if registered, to the registered holders thereof, fifty thousand dollars (\$50,000) par value of the principal represented by said bonds respectively in gold coin of the United States [9] of or equal to the present standard of weight and fineness at the office of Detroit Trust Company, Detroit, Michigan, and to pay interest on said bonds from the date thereof until paid, at the rate of six per cent (6%) per annum in like gold coin, on the first days of March and September in each and every year until the principal of said bonds respectively became due.

Twelfth. Under date of September 1st, 1910, the defendant Lumber Company, pursuant to the resolution and determination above set forth, due corporate action having first been had, in order to secure the principal and interest of said bonds when the same should become due and payable, and to secure the performance and observance of all the covenants, agreements and conditions on the part of said Lumber Company contained in the mortgage hereinafter mentioned and to declare the terms and conditions upon which said bonds were issued and for other good and valuable considerations, made, executed and delivered to the plaintiffs as trustees its certain mortgage or deed of trust (hereinafter called "mortgage") bearing date September first, 1910, wherein it granted, bargained, sold, transferred, assigned, mortgaged and conveyed, and warranted unto said plaintiffs as Trustees, and their successors in said trust, the following described real and personal

property in the county of Chehalis (now changed to Grays Harbor County), State of Washington:

All of the lands, water front, timber and other property hereinafter described, together with all the buildings, structures and improvements of every kind and character that are now, or may hereafter be placed upon said lands, and all the rights, ways, privileges, servitudes, appurtenances and prescriptions thereto belonging or in anywise appertaining, and especially including all lumber-mills and lumber-mill plants, sawmills, planing-mills, machine-shops, sheds, pump-houses, blacksmith-shops, barns, oil-houses, boilers, engines, pumps, machinery, sprinkler systems, fire apparatus, kilns, power-houses, tools, fixtures, furniture, appliances, shafting, conveyors, electric apparatus, office buildings, logging roads, tramways, railways and appurtenances, rolling stock, locomotives and cars, loaders, rails, ties, stations, platforms, lumber and logging camps and equipments, mill sites and lumber-yards, booms, dwelling-houses, wharves and planking, [10] patterns, boats, tanks, burners, horses, trucks and wagons, and the entire plants and equipments and all improvements or additions, now or that hereafter may be erected or located on any of said lands or premises, or which are or may hereafter be connected with, appertaining to, or used in connection with the same, now owned or hereafter acquired, and all substitutions, replacements or renewals or additions to said lands, premises and

property, or any part thereof, and all lands and other property which may be added thereto and brought under the terms hereof as hereinafter provided; and all the timber and other forest products on said lands and premises, or any of them, or that hereafter may be thereon; and all personal property whether enumerated hereinbefore or not, now owned, or which shall be hereafter acquired by the Lumber Company, which shall be situated upon the real property hereinafter described, or which shall be used in connection with any enterprise which shall be located thereon, excepting all logs, lumber, and kindred products paid for, in booms or on mill premises.

A particular description of said lands and premises is as follows:

All those certain pieces or parcels of land situated in the county of Chehalis, State of Washington, known and described as follows:

Lots one (1), two (2), three (3) and four (4) in Block "C"; Lots one (1), two (2), three (3) and four (4) in Block "D"; all of Blocks "F," "G" and "H"; Lot one (1) in Block fourteen (14); Lots one (1), two (2), three (3), four (4), five (5) and six (6), in Block fifteen (15); Lots one (1), two (2), three (3), four (4), five (5), six (6), ten (10), eleven (11) and twelve (12), in Block sixteen (16); Lots one (1) to twelve (12), both inclusive, in Block seventeen (17); Lots three (3), four (4), five (5), six (6), nine (9) and ten (10), in Block eighteen

(18); Lot twelve (12) in Block twenty-five (25); Lots eight (8), nine (9), ten (10), eleven (11) and twelve (12), in Block twenty-six (26); Chehalis Street South of the south line extended of the alley in Block fifteen (15); Newell Street South of the south line extended of the alley in Blocks fifteen (15) and Sixteen (16); Harbor Street south of Grant (now Heron) Street; Kansas Street south of the south line extended of the alley in Block seventeen (17); Kansas Street between Lot four (4) in Block "D" and Lot twelve (12) in Block twenty-five (25); the alley in Block "D"; Summit Street west of the east line of Lot twelve (12), Block twenty-five (25) extended north to Lot one (1) in Block "C"; Harbor Street north of the north line extended of the alley in Block twenty-six (26); the unnamed street lying between Blocks fifteen (15), sixteen (16) and seventeen (17) on the north, and Blocks "G" and "H" on the south; all in Samuel [11] Benn's original plat of the town (now city) of Aberdeen, County of Chehalis, State of Washington; said Plat being recorded in the office of the Auditor of said County of Chehalis, in Book one (1) of Plats, page thirty-nine (39).

Lot one (1), Tract twenty-five (25), and all of Tract thirteen (13), Aberdeen Tide Lands; all the above in Lot two (2), Section nine (9), township seventeen (17), North of Range nine (9) west of the Willamette Meridian, in Chehalis County, State of Washington.

Also Lots one (1), two (2), three (3), four (4) and five (5) in Block "D"; and Lots one (1), two (2), three (3), four (4), five (5) and six (6) in Block "E," in South Aberdeen; Lewis Street north of the south line of Blocks "D" and "E," South Aberdeen; all in Johnston's Plat of South Aberdeen, recorded in the office of the Auditor of said County of Chehalis, in Book One (1) of Plats, page one hundred twenty-five (125); Lots two (2) and three (3), in Tract eleven (11), Aberdeen Tide Lands; all of the above in Lot eight (8), Section nine (9); and Lot six (6), Section ten (10), Township seventeen (17) north, Range nine (9) west, Willamette Meridian; also the south half of the southeast quarter (S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Section eleven (11); the northeast quarter (N. E. $\frac{1}{4}$), and the south half (S. $\frac{1}{2}$) of the northwest quarter (N. W. $\frac{1}{4}$), and an undivided one-half interest in the southeast quarter (S. E. $\frac{1}{4}$) of Section fourteen (14); also the south half (S. $\frac{1}{2}$) of Section fifteen (15); the northeast quarter (N. E. $\frac{1}{4}$), the east half of the northwest quarter (E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$), and the south half (S. $\frac{1}{2}$) of Section twenty-one (21); all of Section twenty-two (22); the east half of the northeast quarter (E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$), and the northwest quarter (N. W. $\frac{1}{4}$) of Section twenty-three (23); all of Sections twenty-seven (27) and twenty-eight (28); the southeast quarter of the northwest quarter (S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$), the northeast quarter of the southwest quarter

(N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$), the south half of the southwest quarter (S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$), and the east half of Section thirty-two (32); all of Section thirty-three (33); the northeast quarter and the southwest quarter (N. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$) of Section thirty-four (34); all in Township twenty-one (21), North of Range nine (9) west, Willamette Meridian; also, the leasehold interest held under and by virtue of a lease from the State of Washington to said S. E. Slade Lumber Company, dated March 10, 1910, and recorded May 17, 1910, in the office of the Auditor of said County of Chehalis, in Book twenty-nine (29) of Miscellaneous Records, page five hundred fifty-two (552), in and to part of Harbor area in front of the following described property, viz: Lots two (2) and three (3), Tract eleven (11), and Tract thirteen (13), Aberdeen Tide and Shore Lands more particularly described as follows: All harbor [12] area lying in front of Lots two (2) and three (3), Tract eleven (11), Aberdeen Tide and Shore Lands, and bounded by the inner and outer harbor lines and the northeasterly line of Lot two (2), and the southwesterly line of Lot three (3) produced across the harbor reserve to the outer harbor line; also all harbor area lying in front of Tract thirteen (13), Aberdeen Tide and Shore Lands and bounded on the northwesterly side by the inner harbor line, and on the southeasterly side by the outer harbor line, and on the southwesterly side by a line drawn

from angle point number eleven (11) on the outer harbor line to angle point number eleven (11) on the inner harbor line, and on the east side by the east line of said Tract thirteen (13) produced across the harbor reserve to the outer harbor line, all as shown on official maps of Aberdeen Tide and Shore Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington; all situate and being in the County of Chehalis, State of Washington; (excepting existing rights of way, property and appurtenances of Railroad and Railway Companies, also excepting all public roads and such mineral claims and rights of way for ditches and canals and other rights as are reserved by the United States in its patents to the respective lands.

Also all railroad rails and angle irons, and four (4) locomotives now belonging to "Lumber Company," and now situate and being in Township 18 North, of Range 6 West, Willamette Meridian, or adjacent thereto, said rails and angle irons now constituting a part of a railroad running into said Township 18 North, of Range 6 West, Willamette Meridian, from a junction point on the Northern Pacific Railroad, commonly known as "Mack's," and said locomotives being now operated on said railroad. It being the intention of said "Lumber Company" to cover in this instrument said rails, angle irons and locomotives, whether same are used upon or in connection with the lands in said

Township 18 North, of Range 6 West, Willamette Meridian, or upon or in connection with any other land or lands whether belonging to "Lumber Company" or otherwise, whether same are covered by the provisions of this mortgage or otherwise, so that said rails, angle irons and locomotives shall be at all times hereafter, wheresoever they are situated, covered by the terms of and subject to the lien created by this instrument. Provided, however, that it is expressly agreed between the "Trustee" and the "Lumber Company" that said "Lumber Company" may at any time prior to the removal of said rails, angle irons and locomotives to the real estate covered by this instrument, dispose of said rails, angle irons and locomotives, or any part or parcel thereof, as it may desire and at such price as it may deem satisfactory, and without first securing permission therefor from "Trustee," with the express understanding that said "Lumber Company" [13] shall pay over to "Trustee" the proceeds of any such sale or sales or disposals of said rails, angle irons or locomotives, or any part or parcel thereof, said proceeds to be placed in the sinking fund hereinafter provided for, or shall in default thereof furnish to the "Trustee" hereunder by appropriate instruments to be approved by said "Trustee,"

other property equal in value to the property sold as above provided for, to take the place of said prop-

erty so sold or disposed of, as security under the terms of this instrument.

All upon the trusts and for the uses, intents and purposes expressed in said mortgage made to the plaintiffs as trustees.

And a true copy of said mortgage to the plaintiffs as trustees is annexed to this bill of complaint and marked Exhibit "A," and the plaintiffs pray leave that the copy of said mortgage marked Exhibit "A" may be taken in all respects as if it were fully and specifically set forth in the body of this bill of complaint.

Thirteenth. Said mortgage Exhibit "A" was executed and delivered in all respects in conformity with law and the plaintiffs duly accepted the trusts created in and by said mortgage before the record of the same and said mortgage was thereafter, and on the 3d day of September, 1910, filed for record in the county auditor's office in the county of Chehalis, State of Washington and recorded in Book 43 of record of mortgages of Chehalis County (State of Washington, on page 430. And on said September 3d, 1910, and within ten (10) days of its execution, an original duplicate of said mortgage accompanied by the statutory affidavit of mortgagor, was filed in the office of the county auditor of said Chehalis County as a chattel mortgage.

Fourteenth. Thereafter all of the bonds secured by and issuable under said mortgage Exhibit "A," one million dollars (\$1,000,000) being the aggregate principal amount thereof, was duly executed and issued as aforesaid, and were duly authenticated by

the endorsement thereon of the certificate of Detroit Trust Company as trustee, as provided in and by [14] said Exhibit "A," and so authenticated were duly issued and delivered by said plaintiff, Detroit Trust Company, Trustee, pursuant to the provisions of said mortgage and according to law, and the plaintiffs are informed and believe, and therefore allege, that said bonds so authenticated and delivered have, and all of them have, been duly issued, negotiated, sold and delivered by the defendant lumber company to the person or persons who thereby became *bona fide* holders thereof as purchasers for value, and that all of said bonds so authenticated and delivered are now outstanding and valid, binding and subsisting obligations of the defendant lumber company, except bonds numbered 1 to 450, both numbers inclusive, for the principal sum of one thousand dollars (\$1,000) each, which said last-mentioned and described bonds have been paid.

Fifteenth. The defendant lumber company made default in the payment of the principal of the bonds due September 1st, 1915 (being bonds numbers 451 to 500, both numbers inclusive), and in the payment of the principal of the bonds due March 1st, 1916 (being bonds numbers 501 to 550, both numbers inclusive), issued and outstanding under and secured by said mortgage Exhibit "A" and such default still continues. Plaintiffs aver that demand was made for the payment of the whole of said principal in default as aforesaid in accordance with the terms of said mortgage Exhibit "A," and especially in accordance with the provisions of "Article XI"

thereof. Said demand was made on June 21st, 1916, by registered mail and was received by lumber company in its office in the city of San Francisco, California, on June 26th, 1916. That more than thirty (30) days has elapsed since the payment of the whole of said principal in default became due and was demanded as aforesaid, and said default still continues.

Sixteenth. In and by "Article XI" of said mortgage Exhibit "A," it is provided among other things, that in case default shall be made in the payment of any of the principal specified in any of the said bonds and any such default shall continue for a period [15] of thirty (30) days after the same becomes due is demanded, the Detroit Trust Company, Trustee, may declare the principal of all the bonds secured by said mortgage Exhibit "A" and then outstanding, to be, and the same shall thereupon become, immediately due and payable anything contained in said bonds or in said mortgage to the contrary notwithstanding. Default having been made by the defendant lumber company in the payment of the principal as aforesaid, and such default having continued for a period of more than thirty (30) days after the payment of said principal amount in default became due and was demanded, the plaintiffs as trustees and Detroit Trust Company, trustee, exercising the option conferred upon it in this regard by said "Article XI," did on July 27th, 1916, declare the principal of all the bonds secured by said mortgage Exhibit "A," and then outstanding, to be immediately due and payable. That

said declaration was made in writing, and an original duplicate thereof filed in the trust files of trustee pertaining to this matter and an original duplicate thereof served on lumber company at its office in the city of San Francisco, California. That since such principal was declared due and payable as aforesaid, no payment of principal or interest or expenses has been made by lumber company.

Seventeenth. That in and by said mortgage Exhibit "A" it is provided that after default by the lumber company, the plaintiffs, as trustees as aforesaid, shall be entitled to take and use the rents, tolls, incomes, issues, earnings and profits of the property and premises described therein. That in and by "Article XV" of said mortgage Exhibit "A," it is provided that upon the commencement by the plaintiffs as trustees of any suit to foreclose said mortgage, lumber company shall enter its appearance voluntarily and shall consent to the entry of an order for the appointment of a receiver of the lands and property covered thereby, and of the earnings, revenues, issues, profits and income thereof for the sole benefit of the holders of the bonds secured thereby. [16]

Eighteenth. That in "Article VI" of said mortgage Exhibit "A," it is expressly provided that if lumber company fail to take out and deliver to the plaintiffs, as trustees, the policies of insurance required thereby, Detroit Trust Company, as trustees, or the plaintiffs, as trustees, may procure such insurance for the benefit of the bondholders, and all sums expended therefor shall be secured by said mortgage,

and shall be payable forthwith by Lumber Company, with interest at the rate of seven per cent (7%) per annum, payable semi-annually.

Nineteenth. That in "Article X" of said mortgage Exhibit "A," it is expressly provided that if Lumber Company make default in the payment of any taxes, assessments, rates, charges or liens provided for in said mortgage, Detroit Trust Company as trustee, or the plaintiffs as trustees, may pay same and the sums so paid shall be secured by said mortgage, and shall be payable forthwith by Lumber Company with interest at the rate of seven per cent (7%) per annum payable semi-annually.

Twentieth. That in "Article XIV" of said mortgage, it is expressly provided that upon a sale being made under a decree of Court the proceeds of such sale, together with any sums then held by Detroit Trust Company as trustee, or by the plaintiff as trustees, shall be first applied to the costs and expenses of the foreclosure proceedings including the cost of procuring abstracts of title and tax statements or extensions thereof, attorneys' fees and trustees' compensations, which said amount shall be secured by said mortgage.

That in said "Article XIV" it is further provided that upon any foreclosure sale the purchaser, in making payments therefor, after making such cash payments as are necessary to cover the costs and expenses of the sale and of the proceedings incident thereto including the trustees' reasonable compensation and attorneys' fees and all other charges that may be decreed to be paid in cash, shall be entitled

to use and apply any outstanding bonds and any [17] matured and unpaid coupons in order that there may be credited thereon such sum as shall be payable thereon out of the net proceeds of the sale. Plaintiffs aver that \$15,000 is a reasonable attorneys' fee in this matter.

Twenty-First. That in "Article XVIII" of said mortgage, Lumber Company expressly assents to the appointment of a receiver as a matter of course in case resort is had to any court to foreclose same, and further consents to the entry of a deficiency judgment or decree in case the decree or judgment of foreclosure is not satisfied at the sale of the mortgaged property.

Twenty-Second. That of the bonds issued under and secured by said mortgage Exhibit "A" there have been paid and canceled those numbered from one (1) to four hundred and fifty (450), both numbers inclusive, aggregating four hundred and fifty thousand dollars (\$450,000) in principal amount. That all interest on the bonds issued under and secured by said mortgage Exhibit "A," and now outstanding, has been paid to March 1st, 1916. That there is now due and owing from the defendant Lumber Company to the plaintiffs as trustees and to the owners and holders of the bonds issued and outstanding under and secured by said mortgage Exhibit "A," the sum of five hundred and fifty thousand dollars (\$550,000) for the principal of said bonds, together with interest on said principal amount at the rate of six per cent (6%) per annum since March 1st, 1916.

Twenty-Third. That there now remains in the

sinking fund provided for by "Article VII" of said mortgage the sum of twenty-four thousand and six dollars and ninety-four cents (\$24,006.94) to the credit of said Lumber Company. That there was not in said sinking fund either on September 1st, 1915, or on March 1st, 1916, a sum of money sufficient to pay the principal of the bonds falling due on those dates respectively.

Twenty-Fourth. That on or about August 29, 1912, the plaintiffs as trustees acting in accordance with the provisions of said mortgage Exhibit "A," released from the lien of said instrument [18] so much of the logging equipment described therein as was on August 29th, 1912, located in Township 21 North of Range 9 West, Chehalis County (now Grays Harbor County), Washington.

That on about August 26th, 1914, the plaintiffs as trustees, acting in accordance with the provisions of said mortgage, Exhibit "A," released from the lien of said instrument so much of the logging equipment described therein as was on August 26th, 1914, located in Township 18, North of Range 6 West, Willamette Meridian, Chehalis County, Washington.

Twenty-Fifth. That the property and premises covered by said mortgage Exhibit "A" or the major portion thereof are now subject to the lien of a certain second mortgage made by S. E. Slade Lumber Company to Detroit Trust Company as of March 1st, 1915, securing a promissory note for sixty-nine thousand dollars (\$69,000). That said second mortgage was filed for record in the office

of the county auditor of Chehalis County, Washington, on March 1st, 1915, and was recorded in book 57 of Record of Mortgages, Chehalis County, on page 378. That an original duplicate of said mortgage, accompanied by the statutory affidavit of mortgagor, was filed in said county auditor's office on March 1st, 1915, within ten (10) days of its execution. That said Detroit Trust Company, second mortgagee as aforesaid is not made a party to this proceeding because it is not an indispensable or necessary party hereto and because it cannot be made a party hereto without ousting the jurisdiction of this Honorable Court. And further plaintiffs aver that said Detroit Trust Company, second mortgagee as aforesaid, has hitherto brought proceedings in this Honorable Court to foreclose its said second mortgage. And plaintiffs aver that there is no identity or unity of ownership whatsoever as to said respective mortgages.

Twenty-Sixth. That no proceedings have been had at law or otherwise and that no other action has been brought for the recovery of said sum secured by said bonds and mortgage or for the recovery of the said mortgage debt, or any part thereof.

Twenty-Seventh. That the plaintiffs further show upon information and belief that the defendants, William T. Cameron-Hoover Logging Company, [19] Humptulips Logging Company, First Federal Trust Company and Milton R. Clark, Trustees, and Slade-Wells Logging Company, have, or claim to have, some interest in or lien upon the said mortgaged premises or some part thereof; but plaintiffs aver

that the interest of each of said defendants, if any, is inferior, subject and subsequent to the lien of these plaintiffs, by virtue of said bonds and mortgage as above set forth.

WHEREFORE the plaintiffs pray:

(1) That said mortgage Exhibit "A" made by the defendant Lumber Company to the plaintiffs be foreclosed.

(2) That the lien of said mortgage Exhibit "A," may be decreed and established as a lien upon all and singular the premises and property of the defendant Lumber Company, real and personal, covered thereby or intended so to be prior to any and all other liens and claims whatsoever, and that a fair and just account may be had touching the amounts due and unpaid upon the bonds issued thereunder and secured thereby.

(3) That in default of the payment of the sums so found to be due within a time to be limited by a decree of this Honorable Court, together with such amounts as may be sufficient to pay all premiums of insurance and all taxes and assessments paid by the plaintiffs as trustees, and all expenses of having abstracts of title and tax histories certified to date, together with interest thereon, and together with such sums as may be allowed by this Honorable Court for the costs of this suit, including all allowances, expenses and compensation to the plaintiffs as trustees, and to pay compensation of plaintiffs' attorneys, counsel, solicitors, agents and representatives and all other expenses, advances and liabilities made or incurred by the plaintiffs as trustees, and compensation and allowances to any receiver

appointed herein, it may be decreed that the defendants, and all persons claiming from, through or under them any interest in or to said mortgaged property, or any [20] part thereof as aforesaid, subject to the lien of said mortgage Exhibit "A," may be absolutely and forever barred and foreclosed of and from all right, title and interest or equity of redemption of, in and to said mortgaged premises or property, or any part thereof, and that a sale of the whole of said mortgaged property and premises in one lot or parcel free and clear of all other liens and claims whatsoever, but subject to the privilege of redemption by the second mortgagee, be ordered in accordance with law and the practices of this Honorable Court, and that the proceeds may be applied in accordance with the provisions of said mortgage Exhibit "A."

(4) That said decree shall further provide that upon any foreclosure sale of the said property or premises, or of any part thereof, the purchaser in making payment therefor shall be entitled to use and apply any outstanding bonds and any matured and unpaid coupons secured by said mortgage exhibit "A," in accordance with and upon the terms and conditions prescribed in said mortgage.

(5) That a receiver be appointed by this Honorable Court with power to take and hold possession of the property and premises covered by the mortgage Exhibit "A," sought to be foreclosed herein, and of the earnings, revenues, issues, profits and income thereof, and with such other and further powers and authority in the premises as is usually possessed by a receiver in like cases, and as this

Court may decree.

(6) That the defendant Lumber Company and its, or any of its officers, directors, agents and employees, and all other persons claiming or pretending to claim under it, may be restrained by injunction of this Honorable Court from interfering with or disposing of said mortgaged premises and property and any part thereof, and any earnings or income therefrom or proceeds thereof. [21]

(7) That the defendants herein may answer all and singular the premises but not under oath (answer under oath being hereby expressly waived.)

(8) That the rights of Detroit Trust Company, second mortgagee, may be completely and adequately preserved by the decree of this Court.

(9) That the plaintiffs may have such other and such further relief in the premises as the nature and circumstances of the case require, and to your Honors may seem meet.

DETROIT TRUST COMPANY.

[Corp. Seal]

By RALPH STONE,

President.

(Seal)

Attest: CHAS. P. SPICER,

Secretary.

ALEXANDER McPHERSON,

As Trustees.

SNOW, McCAMANT and BRONAUGH,

Northwestern Bank Building, Portland, Oregon.

MILLER, SMITH, CANFIELD, PAD-

DOCK & PERRY,

2148 Penobscot Building, Detroit, Michigan.

Solicitors for Plaintiffs.

WALLACE McCAMANT,

Northwestern Bank Building, Portland,
Oregon.

SIDNEY T. MILLER,

2148 Penobscot Building, Detroit, Michi-
gan.

Solicitors and of Counsel for Plaintiffs.
[22]

United States of America,
Eastern District of Michigan,
County of Wayne,—ss.

Ralph Stone being duly sworn deposes and says that he is an officer, to wit, the president, of Detroit Trust Company, one of the above-named plaintiffs, as trustees, and that he has read the foregoing bill of complaint, knows the contents thereof and that the same is true.

RALPH STONE,

Subscribed and sworn to before me this 27th day
of July, 1916.

[Seal]

NORTON J. MILLER,

Notary Public, Wayne Co., Mich.

My commission expires Oct. 12, 1917. [23]

United States of America,
Eastern District of Michigan,
County of Wayne,—ss.

Alexander McPherson, being duly sworn deposes and says that he is one of the above named plaintiffs as trustees and that he has read the foregoing bill of complaint, knows the contents thereof and that the same is true.

ALEXANDER McPHERSON,

Subscribed and sworn to before me this 27th day of July, 1916.

[Seal]

NORTON J. MILLER,

Notary Public, Wayne Co., Mich.

My commission expires Oct. 12, 1917. [24]

**Exhibit "A" Attached to Bill of Complaint for
Foreclosure—Mortgage from S. E. Slade Lum-
ber Co. to Detroit Trust Co.**

THIS INDENTURE, Made this first day of September, A. D. 1910, Between S. E. Slade Lumber Company, a corporation duly organized and existing under and by virtue of the laws of the State of California (sometimes hereinafter for brevity called the "Lumber Company"), party of the first part, and Detroit Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan sometimes hereinafter for brevity called the "Trustee"), and Alexander McPherson, both of Detroit, Wayne County, Michigan, as Trustees, parties of the second part, WITNESSETH:

WHEREAS, at a meeting of the board of directors of said S. E. Slade Lumber Company, duly called and held on the fifteen day of July, A. D. 1910, at No. 112 Market Street in the city of San Francisco, and State of California, the following preamble and resolutions were adopted by the unanimous vote of the entire board of directors then and there present to wit:

WHEREAS, this corporation, S. E. Slade Lumber Company, owns large tracts of timber lands in the State of Washington, with a stumpage aggre-

gating approximately six hundred and fifty-two million (652,000,000) feet, and also owns mills and mill sites and mill plants, waterfront, real estate, railroad tracks and right of way equipment, logging equipment and other structures and buildings on said property:

AND WHEREAS, this company is indebted to banks and others in a considerable amount; [25]

AND WHEREAS, there now exists no bonded indebtedness of this company and it is deemed advisable at this time to originally create a bonded indebtedness for the purpose of providing funds to pay the existing floating indebtedness of this company, and for the further proper conduct of its business;

“NOW, THEREFORE, BE IT RESOLVED, That a bonded indebtedness of S. E. Slade Lumber Company, to the amount of one million dollars (\$1,000,000), in United States gold coin, be and the same hereby is authorized and created for the purpose of providing moneys to pay the existing indebtedness of the corporation, and for all legitimate and necessary corporate purposes; and

“BE IT FURTHER RESOLVED, That the president and secretary of this company be, and they hereby are authorized to execute and issue, in the name of this company and under its corporate seal, first mortgage gold bonds of this company in the sum of one million dollars (\$1,000,000), to consist of one thousand (1,000) bonds, numbered consecutively from one (1) to one thousand (1000), both numbers inclusive, for the principal sum of one thousand dollars (\$1,000) each, payable at the office of

Detroit Trust Company, Detroit, Michigan, to the bearer or registered holder, said bonds to be dated the first day of September, A. D. 1910, and to bear interest at the rate of six per centum (6%) per annum, payable semi-annually on the first day of March and the first day of September of each year, said interest to be payable at the office of Detroit Trust Company, Detroit, Michigan, and to be represented by interest coupons attached to said bonds, which coupons shall be signed by the lithographed signature of the secretary of this company, and that said bonds [26] shall become due and payable in twenty (20) series as follows, to wit:

\$50,000.	Bonds Nos. 1 to 50 inclusive on March	1, 1911
\$50,000.	Bonds Nos. 51 to 100 inclusive on September	1, 1911
\$50,000.	Bonds Nos. 101 to 150 inclusive on March	1, 1912
\$50,000.	Bonds Nos. 151 to 200 inclusive on September	1, 1912
\$50,000.	Bonds Nos. 201 to 250 inclusive on March	1, 1913
\$50,000.	Bonds Nos. 251 to 300 inclusive on September	1, 1913
\$50,000.	Bonds Nos. 301 to 350 inclusive on March	1, 1914
\$50,000.	Bonds Nos. 351 to 400 inclusive on September	1, 1914
\$50,000.	Bonds Nos. 401 to 450 inclusive on March	1, 1915
\$50,000.	Bonds Nos. 451 to 500 inclusive on September	1, 1915
\$50,000.	Bonds Nos. 501 to 550 inclusive on March	1, 1916
\$50,000.	Bonds Nos. 551 to 600 inclusive on September	1, 1916
\$50,000.	Bonds Nos. 601 to 650 inclusive on March	1, 1917
\$50,000.	Bonds Nos. 651 to 700 inclusive on September	1, 1917
\$50,000.	Bonds Nos. 701 to 750 inclusive on March	1, 1918
\$50,000.	Bonds Nos. 751 to 800 inclusive on September	1, 1918
\$50,000.	Bonds Nos. 801 to 850 inclusive on March	1, 1919
\$50,000.	Bonds Nos. 851 to 900 inclusive on September	1, 1919
\$50,000.	Bonds Nos. 901 to 950 inclusive on March	1, 1920
\$50,000.	Bonds Nos. 951 to 1000 inclusive on September	1, 1920;

all of which said bonds, except those of the first series, shall be redeemable at the option of this Company, by the payment to the holders thereof or to Detroit Trust Company for the benefit of such holders, of the principal thereof, together with accrued interest thereon, and a premium of two per centum (2%) upon the principal, on March 1, 1911, or on any interest payment day thereafter before their respective absolute date of maturity; provided that thirty (30) days' previous notice thereof is given as provided in the mortgage or deed of trust securing said bonds, such redemption and payment, if made, to be in the numerical order of said bonds.

AND BE IT FURTHER RESOLVED, that in order to secure the payment of said bonds and interest thereon, the president and secretary of this corporation shall make, execute, acknowledge and deliver in the name of this company and under its corporate seal, a mortgage or deed of trust, bearing even date with said bonds, upon all of the property above mentioned, and all other structures, [27] buildings and property now or hereafter in or upon the premises above mentioned, said mortgage or deed of trust to be made to Detroit Trust Company and Alexander McPherson, both of Detroit, Michigan, as trustees, and to contain such more particular descriptions, and such conditions and covenants for the payment of insurance and taxes and other charges, and rights to operate on said timber lands, and for foreclosure in case of default, and any other conditions, provisions and covenants as may seem necessary or proper to the president

of this corporation; and the bonds and mortgage or deed of trust shall be such form and language as shall be approved by the president of this corporation;

AND BE IT FURTHER RESOLVED, that the said bonds, and the whole thereof, may be sold and disposed of by the president in such lots and parcels, and in such manner and upon such terms as he shall deem proper; and

AND BE IT FURTHER RESOLVED, that the president and secretary be and they hereby are expressly authorized, empowered and directed to do and perform each and every act, deed and thing whatsoever, which to them shall seem requisite or necessary or proper to fully carry out the objects and intent of these resolutions.

AND WHEREAS, the secretary of the said S. E. Slade Lumber Company thereafter, and on the fifteenth day of July, 1910, deposited in the United States mail at San Francisco, California, with postage fully prepaid, copies of said preamble and resolutions hereinbefore set forth, addressed to each of the stockholders of said Lumber Company at his place of residence, and thereafter, and on the sixteenth day of July, 1910, the holders of all of the subscribed or issued capital stock of said S. E. Slade Lumber Company filed with the said secretary of said Lumber Company their written assents to said preamble and resolutions:

AND WHEREAS, thereafter, and after said written assents of all the stockholders, holding all of the issued and outstanding capital [28] stock of said

Lumber Company had been filed with said secretary and before the execution and delivery of this indenture to the said parties of the second part, to wit, on the sixteenth day of July, A. D. 1910, a certificate under the corporate seal of said Lumber Company was made and signed by the president and secretary thereof, and by a majority of the directors thereof, showing a compliance by said Lumber Company with the requirements of subdivision Fifth of Section 359 of the Civil Code of the State of California, and showing also the amount of bonded indebtedness so originally created, and that all of the stock of said Lumber Company was represented by the said written assents so filed with said secretary, which said certificate also stated the total number of issued shares of the capital stock of said party of the first part and was verified by the oath of the president and secretary of said first party, and was in manner and form as provided by law, and which said certificate, before the execution and delivery of this indenture to said parties of the second part, was on the sixteenth day of July, 1910, duly filed as required by law, in the office of the clerk of the city and county where the original Articles of Incorporation of said Lumber Company are filed, to wit: In the office of the clerk of the city and county of San Francisco, State of California, and a certified copy of said certificate, duly certified by the said clerk of the city and county of San Francisco, was thereafter and before the execution and delivery of this indenture to said parties of the second part, to wit, on the nineteenth day of July, 1910, duly filed in the

office of the Secretary of State of the State of California; and

WHEREAS, it has been determined and agreed by the president and secretary of said Lumber Company and by the trustee, that the bonds and coupons shall be in substantially the following form, to wit: [29]

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA.

No. —. \$1000

S. E. SLADE LUMBER COMPANY
SIX PER CENT FIRST MORTGAGE GOLD
BOND.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, S. E. Slade Lumber Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, for value received, acknowledges itself to owe, and hereby promises to pay to the bearer, or, if registered, to be the registered holder hereof, the sum of one thousand dollars (\$1,000) at the maturity of this bond, as hereinafter fixed, together with interest thereon from the date hereof until paid, at the rate of six per centum (6%) per annum, payable semi-annually on the first day of March and the first day of September in each year, upon the presentation and surrender of the annexed interest coupons as they severally become due, except that the bonds of the first series maturing March 1, 1911, as hereinafter set forth, bear only one coupon, viz.: of March 1, 1911; both principal and interest being payable in gold coin of the United States of America, of or

equal to the present standard of weight and fineness, at the office of the Detroit Trust Company, Detroit, Michigan.

Both principal and interest of this bond are payable without deduction for any tax, charge or assessment which the undersigned may be permitted or required to pay or retain therefrom, by whatsoever authority the same may be levied.

This bond is one of one thousand (1,000) bonds, numbered consecutively from one (1) to one thousand (1,000), both numbers inclusive, for the principal sum of one thousand dollars (\$1000) [30] each, all being of the same date, and which become due and payable in twenty (20) series as follows, to wit:

\$50,000.	Bonds Nos.	1 to	50 inclusive on March	1, 1911
\$50,000.	Bonds Nos.	51 to	100 inclusive on September	1, 1911
\$50,000.	Bonds Nos.	101 to	150 inclusive on March	1, 1912
\$50,000.	Bonds Nos.	151 to	200 inclusive on September	1, 1912
\$50,000.	Bonds Nos.	201 to	250 inclusive on March	1, 1913
\$50,000.	Bonds Nos.	251 to	300 inclusive on September	1, 1913
\$50,000.	Bonds Nos.	301 to	350 inclusive on March	1, 1914
\$50,000.	Bonds Nos.	351 to	400 inclusive on September	1, 1914
\$50,000.	Bonds Nos.	401 to	450 inclusive on March	1, 1915
\$50,000.	Bonds Nos.	451 to	500 inclusive on September	1, 1915
\$50,000.	Bonds Nos.	501 to	550 inclusive on March	1, 1916
\$50,000.	Bonds Nos.	551 to	600 inclusive on September	1, 1916
\$50,000.	Bonds Nos.	601 to	650 inclusive on March	1, 1917
\$50,000.	Bonds Nos.	651 to	700 inclusive on September	1, 1917
\$50,000.	Bonds Nos.	701 to	750 inclusive on March	1, 1918
\$50,000.	Bonds Nos.	751 to	800 inclusive on September	1, 1918
\$50,000.	Bonds Nos.	801 to	850 inclusive on March	1, 1919
\$50,000.	Bonds Nos.	851 to	900 inclusive on September	1, 1919
\$50,000.	Bonds Nos.	901 to	950 inclusive on March	1, 1920
\$50,000.	Bonds Nos.	951 to	1000 inclusive on September	1, 1920;

issued by S. E. Slade Lumber Company under its charter and statutory powers, and secured, without preference or priority of security of one bond over another, by a first mortgage or deed of trust, bearing even date herewith, duly executed, acknowledged, delivered and recorded according to the laws of the States of California and Washington by the undersigned to Detroit Trust Company and Alexander McPherson, both of Detroit, Michigan, as trustees covering, mortgaging and conveying to said trustees, in trust, certain real estate and property situated in the State of Washington; to which mortgage or deed of trust reference is hereby made for a description of the property, the nature and extent of the security, the rights of the holders of the bonds under the same, and the terms and conditions under which the bonds are issued and secured.

It is Expressly Agreed and made a part hereof that this bond, before its absolute date of maturity, provided it is not one of the first series maturing March 1, 1911, may, at the option of the undersigned [31] be redeemed and paid on March 1, 1911, or on any interest payment day thereafter, upon payment by the undersigned to the holder hereof, or to Detroit Trust Company for the benefit of the holder hereof, of the principal hereof, and all interest due hereon at the date fixed for such redemption, together with a premium of two per centum (2%) upon the principal, provided thirty (30) days' previous notice of its intention to exercise its said option to make such redemption and payment hereof, before maturity, shall be given by the undersigned,

in the manner provided in said mortgage or deed of trust, such redemption and payment, if made, to be in the numerical order of said bonds.

This bond shall pass by delivery, unless registered, but it may be registered as to principal in the owner's name on the books of Detroit Trust Company in its office in Detroit, Michigan, such registry being noted hereon by the said Trust Company, after which only such registered owner or the legal representative of such owner shall be entitled to receive the principal hereof, and no transfer shall be valid unless made on said Trust Company's books by the registered owner in person, or by the legal representative of such owner, and similarly noted hereon, but the same may be discharged from registry by transfer to bearer, after which it shall be transferable by delivery, but it may be registered again as above.

This bond shall not become obligatory for any purpose until the trustee's certificate indorsed hereon is signed by said Detroit Trust Company, Trustee.

IN WITNESS WHEREOF, S. E. Slade Lumber Company has caused this bond to be signed by its president and attested by its secretary, under its corporate name and seal, and the interest coupons or coupon hereto attached to be authenticated by the fac-simile [32] signature of its secretary this first day of September, A. D. 1910.

S. E. SLADE LUMBER COMPANY.

[Seal]

Attest: _____,

President.

_____,

Secretary.

(FORM OF COUPON.)

No. —

\$30.00

On the first day of —, A. D. 19—, S. E. Slade Lumber Company will pay to bearer thirty dollars in United States gold coin, at the office of Detroit Trust Company, Detroit, Michigan, without deduction for taxes, being six months' interest due that day on its first mortgage gold bond of September 1st, A. D. 1910, No. —.

Secretary.

(TRUSTEE'S CERTIFICATE.)

THIS IS TO CERTIFY that this bond is one of the issue of bonds described in the mortgage or deed of trust within mentioned.

DETROIT TRUST COMPANY,

Trustee.

By _____

Secretary. [33]

NOTICE.

Nothing can be written on this bond except by an officer of Detroit Trust Company as registrar, without impairing its negotiability.

Date.	In Whose Name Registered	Registrar
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.....
.....

(FORM OF GUARANTY)

FOR VALUE RECEIVED, I hereby guarantee due payment of the principal and interest of the within bond.

Dated at San Francisco, California, September 1st, 1910.

(Sd.) S. E. SLADE.

Detroit Safety and Collateral Deposit Company, of Detroit, Michigan, Hereby certifies that the mortgage or deed of trust referred to in this bond is deposited with and held by it.

DETROIT SAFETY AND COLLATERAL
DEPOSIT COMPANY,

By _____,
Assistant Secretary.

NOW, THEREFORE, said S. E. Slade Lumber Company, in consideration of the premises and of one (1) dollar to it paid, the receipt whereof is hereby hereby acknowledged, in the exercise of its corporate powers, and in pursuance of the resolutions aforesaid, and in order to secure the due and punctual payment of the principal and interest of the said bonds, and the due performance of all the covenants, provisions, agreements and conditions of said bonds [34] and this instrument, on its part to be performed, and to secure all future holders of said bonds and coupons, has granted, bargained, sold, transferred, assigned, mortgaged and conveyed and warranted and by these presents does grant, bargain, sell, transfer, assign, mortgage and convey and warrant unto the parties of the second part in trust as herein provided, and their successors in trust, and assigns, with full power of succession to and enjoyment of the rights and privileges of the party of the first part, all of the lands, waterfront, timber and other property hereinafter described, together with all the buildings, structures

and improvements of every kind and character that are now, or may hereafter be placed upon said lands, and all the rights, ways, privileges, servitudes, appurtenances, and prescriptions thereto belonging or in anywise appertaining, and especially including all lumber-mills and lumber-mill plants, sawmills, planing-mills, machine-shops, sheds, pump-houses, blacksmith-shops, barns, oil-houses, boilers, engines, pumps, machinery, sprinkler systems, fire apparatus, kilns, power houses, tools, fixtures, furniture, appliances, shafting, conveyors, electric apparatus, office buildings, logging roads, tramways, railways and appurtenances, rolling stock, locomotives and cars, loaders, rails, ties, stations, platforms, lumber and logging camps and equipments, mill sites and lumber-yards, booms, dwelling-houses, wharves and plank-ing, patterns, boats, tanks, burners, horses, trucks and wagons, and the entire plants and equipments and all improvements or additions now or that hereafter may be erected or located on any of said lands or premises, or which are or may be hereafter connected with, appertaining to, or used in connection with the same, now owned or hereafter acquired, and all substitutions, replacements or renewals or additions to said lands, premises and property, or any part thereof, and all lands and other property which may be added thereto and brought under the terms hereof as hereinafter provided; and all the timber and other forest products on said lands and premises, or any of them, or that hereafter may be thereon; and all personal property [35] whether enumerated hereinbefore or not, now owned or which shall be

hereafter acquired by the Lumber Company, which shall be situated upon the real property hereinafter described or which shall be used in connection with any enterprise which shall be located thereon, excepting all logs, lumber and kindred products paid for in booms or on mill premises.

A particular description of said lands and premises is as follows:

All those certain pieces or parcels of land situated in the county of Chehalis, State of Washington, known and described as follows:

Lots one (1), two (2), three (3), and four (4), in Block "C"; Lots one (1), two (2), three (3) and four (4) in Block "D"; all of Blocks "F," "G" and "H"; Lot one (1) in Block fourteen (14); Lots one (1), two (2), three (3), four (4), five (5) and six (6), in Block fifteen (15);

Lots one (1), two (2), three (3), four (4), five (5), six (6), ten (10), eleven (11) and twelve (12), in Block sixteen (16); Lots one (1) to twelve (12), both inclusive, in Block seventeen (17); Lots three (3), four (4), five (5), six (6), nine (9) and ten (10), in Block eighteen (18); Lot twelve (12) in Block twenty-five (25); Lots eight (8), nine (9), ten (10), eleven (11) and twelve (12), in Block twenty-six (26); Chehalis Street South of the south line extended of the alley in Block fifteen (15); Newell Street South of the south line extended of the alley in Block fifteen (15) and sixteen (16); Harbor Street South of Grant (now Heron) Street; Kansas Street South of the South line extended of the

alley in Block seventeen (17); Kansas Street between Lot four (4) in Block "D" and Lot twelve (12) in Block twenty-five (25); the alley in Block "D"; Summit Street west of the east line of Lot twelve (12), Block twenty-five (25) extended north to Lot one (1) in Block "C"; Harbor Street north of the north line extended of the alley in Block twenty-six (26); the unnamed street lying between Blocks fifteen (15), sixteen (16) and seventeen (17) on the north, and Blocks "G" and "H" on the south; all in Samuel Benn's original plat of the town (now city) of Aberdeen, County of Chehalis, State of Washington; said Plat being recorded in the office of the Auditor of said County of Chehalis, in Book one (1) of Plats, page thirty-nine (39).

Lot one (1), Tract twenty-five (25), and all of Tract thirteen (13), Aberdeen Tide Lands; all the above in Lot two (2), Section nine (9), Township seventeen (17), North of Range nine (9), west of the Willamette Meridian, in Chehalis County, State of Washington. [36]

Also Lots one (1), two (2), three (3), four (4) and five (5), in Block "D"; and Lots one (1), two (2), three (3), four (4), five (5) and six (6), in Block "E," in South Aberdeen; Lewis Street north of the south line of Blocks "D" and "E," South Aberdeen; all in Johnston's Plat of South Aberdeen, recorded in the office of the Auditor of said County of Chehalis, in Book one (1) of Plats, page one hundred twenty-five (125); Lots two (2) and three (3), in Tract

eleven (11), Aberdeen Tide Lands; all of the above in Lot eight (8), Section nine (9); and Lot six (6), Section ten (10), Township seventeen (17) north, Range nine (9) West, Willamette Meridian; also the south half of the southeast quarter (S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Section eleven (11); the northeast quarter (N. E. $\frac{1}{4}$), and the south half (S. $\frac{1}{2}$) of the northwest quarter (N. W. $\frac{1}{4}$), and an undivided one-half interest in the southeast quarter (S. E. $\frac{1}{4}$) of Section fourteen (14); also the south half (S. $\frac{1}{2}$) of Section fifteen (15); the northeast quarter (N. E. $\frac{1}{4}$), the east half of the northwest quarter (E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$), and the south half (S. $\frac{1}{2}$) of Section twenty-one (21); all of Section twenty-two (22); the east half of the northeast quarter (E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$), and the northwest quarter (N. W. $\frac{1}{4}$) of Section twenty-three (23); all of Sections twenty-seven (27) and twenty-eight (28); the southeast quarter of the northwest quarter (S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$); the northeast quarter of the southwest quarter (N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$), the south half of the southwest quarter (S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$), and the east half of Section thirty-two (32); all of Section thirty-three (33); the northeast quarter and the southwest quarter (N. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$) of Section thirty-four (34); all in Township twenty-one (21), North of Range nine (9) west, Willamette Meridian; also, the leasehold interest held under and by virtue of a lease from the State of Washington to said S. E. Slade Lumber

Company, dated March 10, 1910, and recorded May 17, 1910, in the office of the Auditor of said County of Chehalis, in Book twenty-nine (29) of Miscellaneous Records, page five hundred fifty-two (552), in and to part of Harbor area in front of the following described property, viz.: Lots two (2) and three (3), Tract eleven (11), and Tract thirteen (13), Aberdeen Tide and Shore Lands more particularly described as follows: All Harbor area lying in front of Lots two (2) and three (3), Tract eleven (11), Aberdeen Tide and Shore lands, and bounded by the inner and outer harbor lines and the northeasterly line of Lot two (2), and the southwesterly line of Lot three (3), produced across the harbor reserve to the outer harbor line; also all harbor area lying in front of Tract thirteen (13), Aberdeen Tide and Shore Lands and bounded on the northwesterly side by the inner harbor line, and on the southeasterly side by the outer harbor line, and on the southwesterly side by a line drawn from angle point number eleven (11) on the outer harbor [37] line to angle point number eleven (11) on the inner harbor line, and on the east side by the east line of said Tract thirteen (13) produced across the harbor reserve to the outer harbor line, all as shown on official maps of Aberdeen Tide and Shore Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington; all situate and being in the county of Chehalis, State of Washington; (excepting existing rights of way, property and

appurtenances of Railroad and Railway Companies; also excepting all public roads and such mineral claims and rights of way for ditches and canals and other rights as are reserved by the United States in its patents to the respective lands).

Also all railroad rails and angle-irons, and four (4) locomotives now belonging to "Lumber Company," and now situate and being in Township 18 North, of Range 6 West, Willamette, Meridian, or adjacent thereto, said rails and angle-irons now constituting a part of a railroad running into said Township 18 North, of Range 6 West, Willamette, Meridian, from a junction point on the Northern Pacific Railroad, commonly known as "Mack's," and said locomotives being now operated on said railroad. It being the intention of said "Lumber Company" to cover in this instrument said rails, angle-irons and locomotives, whether same are used upon or in connection with the lands in said Township 18 North, of Range 6 West, Willamette Meridian, or upon or in connection with any other land or lands whether belonging to "Lumber Company" or otherwise, whether same are covered by the provisions of this mortgage or otherwise, so that said rails, angle-irons and locomotives shall be at all times hereafter, where-soever they are situated, covered by the terms of and subject to the lien created by this instrument. Provided, however, that it is expressly agreed between the "trustee" and the "Lumber Company" that said "Lumber Company" may

at any time prior to the removal of said rails, angle-irons and locomotives to the real estate covered by this instrument, dispose of said rails, angle-irons and locomotives, or any part or parcel thereof, as it may desire and at such price as it may deem satisfactory, and without first securing permission therefor from "trustee," with the express understanding that said "Lumber Company" shall pay over to "trustee" the proceeds of any such sale or sales or disposals of said rails, angle-irons or locomotives, or any part or parcel thereof, said proceeds to be placed in the sinking fund hereinafter provided for, or shall in default thereof furnish to the "trustee" hereunder by appropriate instruments to be approved by said "trustee,"

other property equal in value to the property sold as above provided for, to take the place of said property so sold or disposed of, as security **under the** terms of this instrument. [38]

TO HAVE AND TO HOLD all and singular the above mentioned and described property and every part and parcel thereof (subject to the exceptions and reservations aforesaid), together with all the rights and appurtenances thereunto belonging, and the rents, tolls, incomes, issues, earnings and profits therefrom accruing, unto the said trustees, parties of the second part, and their successors and assigns, **FOREVER.**

IN TRUST, NEVERTHELESS, for the equal pro rata use, benefit and security of each and all and every the persons, firms, associations and corpora-

tions, who are, or shall be, or in time become, the holder or holders of any of said bonds or the coupons appertaining thereto, issued under and secured by this indenture, for the enforcement of the payment of said bonds and interest, when payable, according to the tenor and purport and effect of said bonds and coupons, and to secure the performance and observance of and compliance with the covenants, provisions, agreements and conditions of this indenture; and without preference, priority or distinction of one bond or coupon over any other bond or coupon, by reason of priority in issue, sale or negotiation thereof, or by reason of the purpose of its issue, or otherwise, howsoever, so that each and every bond issued hereunder shall have the same right, lien and privilege, under and by virtue of this indenture, and so that the principal and interest of every such bond shall, subject to the terms thereof and of this indenture, be equally and proportionately secured hereby.

PROVIDED ALWAYS, and these presents are upon the express condition that if S. E. Slade Lumber Company, party of the first part, or its successors or assigns, shall well and truly pay or cause to be paid to the holders of said bonds and coupons, when the same shall become due and payable, the principal and interest thereon, and any and all moneys secured thereby (without deduction of any United States, state, county or municipal or other taxes, charges or assessments, which the Lumber Company [39] may be required or permitted to

pay or retain therefrom by any present or future law), according to the terms, provisions, conditions and tenor or effect of the said bonds and coupons, and shall well and truly keep and perform the provisions, covenants, agreements and conditions to be kept and performed by it, as herein provided, then these presents and the estate hereby granted shall cease and determine as fully as if this indenture had never been executed; and

PROVIDED ALWAYS, and these presents are upon the express conditions that, until default shall be made by S. E. Slade Lumber Company, or its successors or assigns, in the payment of the principal or interest due upon said bonds or some part thereof, as therein or herein provided, or until default shall be made in the due and punctual performance or keeping of any of the covenants, provisions, agreements and conditions to be kept and performed by said S. E. Slade Lumber Company, it, the said party of the first part, its successors or assigns, shall be suffered and permitted to possess and enjoy all of said property and premises, with the appurtenances, and all and singular the rights and privileges hereinbefore described, and to receive, take and use the rents, tolls, incomes, issues, earnings and profits thereof.

IT IS FURTHER DECLARED AND AGREED by the parties hereto, that this indenture is made under the following stipulations, agreements and conditions which shall be binding upon the parties hereto, their successors and assigns, and upon future

holders of the bonds and coupons hereby secured, to wit:

ARTICLE I. S. E. Slade Lumber Company does hereby expressly agree and bind itself, its successors and assigns, not to alienate or in any manner incumber the property hereby mortgaged or conveyed, except as hereinafter provided,

ARTICLE II. S. E. Slade Lumber Company, its successors and assigns, shall have the right, on March 1, 1911, or [40] on any interest payment date thereafter, before their date of absolute maturity, to redeem and pay the bonds hereinbefore described, except those of the first series, to the holders thereof or to said Detroit Trust Company, for the benefit of the holders thereof at the rate of one hundred and two (102) cents on the dollar of the principal of said bonds and the interest accrued to such date, by forwarding to said Detroit Trust Company, by way of notice, not less than thirty (30) days prior to the date of the proposed redemption, a certified copy of a resolution of its board of directors, stating the numbers of the bonds which shall be redeemed; Provided, that not less than twenty-five thousand dollars (\$25,000) of principal of the bonds aforesaid shall be redeemed and paid hereunder at any one time; and Provided Further, that if S. E. Slade Lumber Company redeems and pays only a part of said bonds, the bonds so redeemed and paid shall be redeemed and paid in their numerical order. On depositing with said Detroit Trust Company the amount of the principal of said bonds paid for at one hundred and two (102) cents on the dollar, and

all accrued interest to the proposed date of redemption and payment, further interest on said bonds shall cease from the date fixed for the redemption thereof.

Provided, However, that said deposit be made at least five (5) days prior to the redemption date. On receiving such notice, Detroit Trust Company shall give notice of the redemption to the holders of all bonds to be redeemed, by publication, designating the numbers of said bonds to be so redeemed, said publication to be made in a daily newspaper of general circulation published in the city of Detroit, Michigan; such notice shall be published at least once in each week for two (2) successive weeks prior to the date of redemption. If any of such bonds proposed to be redeemed are registered, then a copy of such notice shall be mailed by Detroit Trust Company to the postoffice address of the party in whose name said bond is registered, as such address may appear on the bond register. All expense [41] of such publication and mailing of notices shall be borne by the Lumber Company and shall be paid by it in advance to said Detroit Trust Company, which latter shall not be required to act hereunder until such payment is duly made.

All bonds and coupons surrendered to the trustee and paid and redeemed, whether under the provisions of this article or otherwise, shall be cancelled by the trustee and delivered to the Lumber Company, and shall not thereafter be reissued.

ARTICLE III. While the Lumber Company shall be in possession of the premises and property covered by this instrument, it is understood and

agreed that the Lumber Company shall have the right to cut or remove timber from said premises or of the timber covered hereby, and convert the same to its own use, upon the following terms and conditions: Before beginning to cut or remove any such timber the Lumber Company shall file with the trustee due and sufficient information, with maps, plats, facts and figures showing and advising the trustee of the location and quantity of the timber which it is proposed to cut or remove during each month of the period during which such cutting or removal is proposed to continue; all duly verified by the signature of the president or secretary of the Lumber Company; the quantity of such timber shall be determined by the estimates of James D. Lacey & Company, duplicate copies of which are on file in the offices of the trustee and the Lumber Company, or by other estimate satisfactory to and to be filed with and accepted in writing by the trustee; the Lumber Company shall pay to the trustee in advance on the first day of each month at the rate of three dollars (\$3) per thousand feet of stumpage for all the timber proposed to be cut or removed during that month; the amount of timber so cut or removed shall be verified at the end of each month, or as often as the trustee may in writing require; such verification shall be evidenced by the sworn statement of an officer of the Lumber [42] Company, or of some other person satisfactory to the trustee; in case such verification shall show any excess of timber over the estimates as aforesaid, the Lumber Company hereby covenants and agrees that it will immediately and without

demand pay to the trustee for such excess at the rate aforesaid; in case the amount of timber proves to be less than the estimate, the Lumber Company shall not be entitled to receive back any part of the price paid by it; all payments made under the provisions of this article shall be placed in the sinking fund hereinafter mentioned and shall be disposed of as hereinafter provided.

PROVIDED, that no timber shall be cut or removed as aforesaid without the consent in writing of the trustee while the Lumber Company is in default in payment for timber, or in payment of principal or interest or in any other covenant, provision, agreement or condition hereunder. And Provided further, that all cutting hereunder shall include all the merchantable timber included in the territory proposed to be cut over, and shall be done in a good, workmanlike manner and so as to reduce as much as possible the danger of fire.

ARTICLE IV. While the Lumber Company shall be in possession of the mortgaged premises and property, and there shall be no existing default by the Lumber Company hereunder, it is expressly understood and agreed that the parties of the second part shall, upon written request of the Lumber Company, and upon proper terms to be agreed upon by and between the Lumber Company and the trustee, release from the lien hereof the mills and mill sites and waterfront hereinbefore described, including the real estate and mill site at Aberdeen, or any part thereof, if and when the same are required by the Lumber Company for the purpose of legal and

proper consolidation with other property of similar character, provided that in such event the parties of the second part shall be protected by shipping and milling or other contracts or agreements satisfactory to the trustee, and [43] duly assigned if required by it as security hereunder by instrument or instruments of assignment satisfactory and acceptable to the trustee. It is hereby expressly understood and agreed that the terms of transfer or exchange involved in any such consolidation, and the amount, value and character of the property to be received in exchange for the property released shall be satisfactory to the trustee, and that the property so received in exchange, whether stocks, bonds, cash, agreements, or other property, shall, by proper instrument or instruments, in form and substance to be approved by the trustee, be brought under the lien of this indenture.

ARTICLE V. The Lumber Company shall have full power and authority from time to time, while it shall not be in default hereunder, to dispose of such portions of its equipment and machinery covered by this instrument as may become unfit for use or unnecessary, provided it shall replace the same by other or new equipment satisfactory to the trustee, of equal value and availability, and free and clear of any incumbrances, lien, charge or claim whatsoever, and which shall thereupon become subject to the lien and operation of this instrument; and the trustee shall have power from time to time, together with Alexander McPherson, or his successor in trust, to release from the lien of this instrument any prop-

erty whatsoever covered hereby, when other property of equal value is substituted therefor in manner approved by the trustee, which property shall be thereby, by such substitution, subject to the lien and operation of this instrument; or when in the judgment of the trustee said release shall not impair the security of this instrument in any manner; or when there shall be paid to the trustee for the sinking fund herein provided for a sum equal, in the judgment of the trustee, to the value of the property released; such value in the case of release of timber may, in the discretion of the trustee, be based upon the estimates thereof on file in the office of the trustee, or upon other estimates or information satisfactory [44] to the trustee; the trustee may execute and cause to be executed and deliver such release or other instrument upon receiving from the president or secretary of the Lumber Company a sworn statement of such officer that the property to be so released is no longer necessary for use in the conduct of the business of the Lumber Company, and that full value has been received therefor by said Lumber Company; or the trustee may require such other proof or evidence, or make such investigation as to it may seem best before the execution of said release. Such sworn statement shall be a full protection to the parties of the second part. Nothing herein stated shall be construed as implying an obligation on the part of the trustee or Alexander McPherson, or his successor in trust, to release any part or portion of the property covered by this instrument, as provided in this Article.

ARTICLE VI. The Lumber Company further agrees that it will keep the insurable property covered by this indenture, at all times insured against loss or damage by fire or boiler explosion, or other loss or damage in the discretion of the trustee, in insurance companies and in amounts approved by the trustee, and will deposit with the trustee all policies for whatsoever insurance is written. The policies of insurance shall provide by proper stipulations that in case of loss the same shall be payable to the trustee, as its interest may appear. Should the Lumber Company fail to take out and deliver to the trustee, policies of insurance, as above required, in that case the trustee is authorized, but is not hereby required, to procure insurance as aforesaid for the benefit of the bondholders; and all sums expended by the trustee in premiums for insurance shall be, and hereby are secured by this indenture, payable forthwith with interest thereon at the rate of seven per centum (7%) per annum, payable semi-annually. In case of loss, the trustee shall, subject to the proviso hereinafter contained, allow the insurance money received on any policy of insurance procured by the Lumber Company, [45] or by the trustee, to be applied by the Lumber Company toward the replacement of or addition to the property destroyed or injured, if the Lumber Company shall in writing so request. The trustee shall, upon such request, pay over to the Lumber Company for that purpose, either ratably as the work progresses, or when the work is completed, at the option of the Lumber Company, on receipt of affidavits of the

president and secretary thereof, showing that said property has been replaced by new or additional property, costing as much as the amount of money so paid over, any or all of the said insurance money received by the trustee on policies procured by the Lumber Company or the trustee. If the Lumber Company shall not, within six months after the time the trustee shall receive said insurance money, request the same for the purpose of replacing the property destroyed or injured, then the said money shall be placed in the sinking fund hereinafter mentioned, and shall be disposed of as hereinafter provided. If at any time after the receipt of said insurance money by the trustee, the Lumber Company desires the same or any part thereof to be placed in the sinking fund, it shall be so placed at the request in writing of the Lumber Company. Provided, However, that should the Lumber Company be in default, in any respect under this mortgage at any time before the trustee shall have paid out such insurance moneys, as aforesaid, then the trustee may, in its discretion, place such insurance moneys or any balance thereof in its hands, in the sinking fund. In case of any loss covered by any policy of insurance, any appraisement or adjustment of such loss and settlement and payment of indemnity therefor, which may be agreed upon between the Lumber Company and any insurance company, may be consented to and accepted by the trustee, and the said trustee shall be in no way liable or responsible for the collection of any insurance in case of loss.

ARTICLE VII. The sums of money that shall be paid to the trustee for timber, or for releases of property as hereinbefore [46] provided, shall be placed in the sinking fund, and together with any insurance moneys that may be placed in said sinking fund in case of loss, as hereinbefore provided, shall be held by the trustee in such sinking fund to pay the principal of the hereinbefore described bonds, or so many as may be then outstanding, and the interest on said bonds, as they severally become due. If there should be a balance after paying all bonds and interest due, it shall be applied without request therefor, to the payment of the principal and interest of the bonds first falling due thereafter, provided that the Lumber Company may, by notice as hereinbefore provided, require that said balance shall be applied to the redemption of bonds as hereinbefore set forth.

The trustee shall pay interest on all amounts so deposited with it for the sinking fund, at the rate of two per cent (2%) per annum during the time, not less than one (1) month, the same is held by it, which interest shall be credited to or paid into the sinking fund and shall constitute a part thereof.

ARTICLE VIII. The Lumber Company agrees and covenants that it will duly and punctually pay or cause to be paid, to the holder of every bond and coupon issued hereunder and secured hereby the principal and interest accruing thereon (together with interest at six per cent per annum on all defaulted coupons), all in gold coin of the United States of America, of or equivalent to the present

standard of weight and fineness, at the date and place and in the manner mentioned in said bonds or in the coupons thereto appertaining, according to the true intent and meaning thereof, subject only to the right of the Lumber Company to redeem said bonds under Article II hereof, without deduction, (except of such amount as may be necessary to avoid any legal charge or usury), from either principal or interest for any taxes, assessments, rates or charges which may be imposed in the premises, including those based on this instrument, or the indebtedness at any time secured thereby, whether treated as an interest in [47] the property covered hereby or otherwise, and without deduction (except of such amount as may be necessary to avoid any legal charge of usury), from either principal or interest on account of any taxes, assessments, rates, or charges which the Lumber Company may be required or permitted to pay or retain, under any present or future law of the United States, or of any state, county or municipality therein; and to that end the Lumber Company shall deposit with the trustee at least five (5) days before each respective maturity date of both principal and interest, funds sufficient when added to the sinking fund available for that purpose, to pay the same, as aforesaid; and in the event that the Lumber Company, not being in default in any respect hereunder, shall deposit with the trustee, for the benefit of the holders of the outstanding bonds and coupons secured hereby, the full sum required to liquidate and discharge all such outstanding bonds and coupons up to maturity, ac-

according to the tenor and effect thereof, and according to the terms of this instrument, and the costs and expenses of this trust, accrued and to accrue, the Lumber Company shall be entitled to have this instrument released in like manner as if full payment of said bonds and coupons had been made to the holder or holders thereof, and all of said bonds and coupons thereupon cancelled. And in that case the said parties of the second part and their successor or successors in trust, shall, on demand of the Lumber Company, and upon payment to the trustee of its reasonable expenses, including disbursements and attorney's fees incurred by it in the premises, execute and deliver to the Lumber Company all such instruments as may be necessary to discharge and cancel this mortgage of record.

ARTICLE IX. The Lumber Company, as and when the same shall become due and payable, will pay all taxes, assessments, rates and charges of every name and nature which have been or shall be imposed, assessed or levied upon or against the property covered hereby, or any part thereof, or upon or against or [48] on account of the debt secured hereby, or any part thereof, or upon or against the interest of the said parties of the second part, or either of them, or their successors, or the holders of the bonds and coupons secured hereby or any of them in said property or any part thereof, or upon or against the product, income or profit derived therefrom, or upon or on account of this instrument, provided, that in no case shall the Lumber Company be required hereby to pay the whole of any tax,

assessment, rate or charge, the payment whereof in full would create a usurious burden upon it, but it shall be bound hereby to pay only so much thereof as can be done without creating such usurious burden; and provided further, that upon the enactment of any future legislation whether State or Federal or upon the operation of any present law upon this instrument, whereby the payment in full of any such taxes or assessments as aforesaid would create such usurious burden, this instrument and the whole sum then secured hereby shall mature and become immediately due and payable, anything herein contained to the contrary notwithstanding and the Lumber Company will also pay punctually, from time to time, all laborers' and mechanics' liens, and all other liens and charges lawfully imposed on the property covered hereby, or any part thereof, so that the priority of these presents shall at all times be fully maintained and preserved; and the Lumber Company further covenants that it will not suffer to be done or permit any act, matter or thing whatsoever whereby the lien of this instrument might or could be impaired, until the bonds hereby secured, and all interest accrued thereon, shall be fully paid and satisfied; and the Lumber Company hereby waives any and all claims or rights against the parties of the second part, their successors or assigns, to any payment or rebate on or offset against the interest or principal of the debt secured hereby by reason of the payment as aforesaid of any of the aforesaid taxes, assessments, rates, charges or liens;

and will deliver the receipts therefor, if required, to [49] the trustee; and the Lumber Company will do, on demand of the trustee, its successors or assigns, all acts necessary or proper to keep valid the lien by these presents created, and intended to be created, and at any future time, and as often as necessary, will execute, on demand as aforesaid, all such assurances, deeds, mortgages and other instruments in writing, in due form and effect, as may be proper to the better carrying out of the true intent and meaning of these presents.

ARTICLE X. If the Lumber Company shall make default in the payment of any taxes, assessments, rates, charges or liens, as herein provided, and whether the same are now due and unpaid or may hereafter become due, the trustee its successors or assigns, may pay the same and the sums so paid shall be and hereby are secured by this instrument, and all such sums, as well as all sums paid by the Trustee for premiums of insurance, shall be payable forthwith by the Lumber Company, with interest at the rate of seven per cent (7%) per annum, payable semi-annually.

ARTICLE XI. In case (1) default shall be made in the payment of any of the principal or any of the interest money specified in said bonds or coupons, or any or either of them, and any such default shall continue for a period of thirty (30) days after the same becomes due and is demanded, or (2) default shall be made in the due observance or performance of any other covenant, agreement, provision or condition herein required to be kept or performed by

the Lumber Company, and any such default shall continue for a period of thirty (30) days after written notice thereof to the Lumber Company from the trustee or from the holder of any of the outstanding bonds hereby secured, the trustee, or its successor or successors in the trust hereby created, may, and if thereunto requested in writing by the holder or holders of a majority in amount of the said bonds then outstanding, shall declare the principal of all the bonds [50] hereby secured and then outstanding to be and the same shall thereupon become immediately due and payable, anything contained in said bonds or herein to the contrary notwithstanding. This provision is, however, subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon such bonds (with interest on overdue instalments of interest), the principal of all bonds which by their terms are past due, and the expenses of the trustee shall be paid by the Lumber Company or collected out of the mortgaged property, and any other default or defaults of the Lumber Company adjusted before any sale of the said property shall have been made, then, and in every such case, the holder or holders of a majority in amount of the bonds hereby secured and then outstanding, by written notice to the Lumber Company and to the trustee, may waive such default and its consequences and obtain from the trustee a rescission of such declaration of the maturity of the principal; but no waiver or rescission shall extend to

or affect any subsequent default or impair any right consequent thereon.

ARTICLE XII. In case (1) default shall be made in the payment of any of the principal or any of the interest money mentioned in said bonds or coupons, or any or either of them, and any such default shall continue for a period of thirty (30) days after the same becomes due and is demanded, or (2) default shall be made in the due observance or performance of any other covenant, agreement, provision or condition herein required to be kept or performed by the Lumber Company, and any such default shall continue for a period of thirty (30) days after written notice thereof to the Lumber Company from the trustee, or from the holder of any of the outstanding bonds, hereby secured, the trustee, either by its own officers, or by its agents or attorneys, may, and (unless proceedings for the foreclosure of this instrument and the appointment of a receiver, as hereinafter provided are instituted) upon the written request of the [51] holders of a majority in amount of the bonds secured hereby, and then outstanding, and upon being indemnified to its satisfaction for its expenses and liabilities, shall forthwith enter into and take full possession of the property hereby mortgaged or intended so to be, and each and every part thereof, and hold, use and manage the same, by such agents and managers as said trustee may appoint, to the best advantage of the holders of the bonds hereby secured and to the fullest extent authorized by law, collect and receive all moneys and revenues

arising from such management, and apply the same to the expenses of the trustee in the performance of the trust, including a reasonable compensation for its own services, the services of its counsel, attorneys, agents and other servants, and next to the management of the property hereby mortgaged, including the payment of insurance and of taxes, assessments, rates and other governmental charges, and any liens or other charges, lawfully imposed upon said property, and such useful additions, alterations or repairs to the mortgaged property, or any of it, as the trustee may think proper to be made, and next to the payment pro rata of the principal and interest due and in default on said bonds. In case all the said payments shall have been made in full, and no suit to foreclose this mortgage shall have been begun, the trustee after making such provisions as to it may seem advisable for the payment of the next semi-annual instalment of principal and interest to fall due, shall restore to the party of the first part, its successors or assigns, the possession of the property hereby mortgaged. This power of entry may be exercised as often as occasion therefor shall arise, pending this trust, and the trustee may, so long as any principal or interest remains in default, continue to exercise the power herein granted for such period or periods as it may deem expedient, unless and until the holders of a majority in amount of bonds secured hereby, then outstanding, shall otherwise in writing request. [52]

In case the Lumber Company shall make any default in any of the respects mentioned in this Arti-

cle, and at any time during the continuance of such default there shall be any existing judgment against the Lumber Company unsatisfied and unsecured by bond or appeal; or in case, in any judicial proceeding commenced by any party or parties other than the trustee herein, a receiver of the Lumber Company or of any of its property hereby conveyed shall be appointed, or a judgment or order entered for the sequestration of its property hereby mortgaged, or any part thereof, the trustee shall be entitled forthwith to exercise the right of entry hereinabove conferred, and may declare the principal of all bonds hereby secured and then outstanding due and payable, and may institute foreclosure proceedings or take other legal action to collect the amount of said bonds and coupons with interest, or to obtain possession of said property, or may exercise any one or more of such rights or remedies without waiting the default period hereinabove prescribed, and also any and all other rights and powers in this instrument conferred and provided to be exercised by the trustee upon the occurrence and continuance of default, as hereinabove provided; and as a matter of right the trustee shall forthwith be entitled to the appointment of a receiver for the property hereby mortgaged and of the earnings, income, issues, and profits thereof, with such powers as the court making such appointment shall confer.

ARTICLE XIII. None of the remedies hereinbefore described shall be regarded as other than cumulative, and the trustee may proceed to foreclose this indenture or otherwise enforce its rights or the

rights of any of the holders of bonds or coupons hereby secured, against the Lumber Company, its successors or assigns, or the property hereby mortgaged, in any court of competent jurisdiction, in the premises, in accordance with and in pursuance of the laws of the State of Washington, or of the [53] State of California, or of the United States of America, and may seek all remedies, both provisional and final, allowed by such court, without any demand for possession and without any of the steps by either party in connection with the remedies hereinbefore described, provided only that some default, refusal, neglect, omission or failure has occurred on the part of the Lumber Company in the manner herein provided as to the discharge of its covenants and obligations herein. And the Lumber Company covenants and agrees that it will not apply for or avail itself of any injunction or stay proceeding, or plead or in any way take advantage of any extension law, valuation law, redemption law, apportionment law, or of any other law now or at any time hereafter in force in either of the States of Washington or California, which may in any way alter, impair or impede the rights or remedies of the holders of the bonds or coupons issued hereunder, or of the parties of the second part, or either of them, or their successors in trust, or which shall affect or change the time, place, means or mode of perfecting or enforcing such rights or remedies; any advantage or benefit conferred upon it by any such laws being hereby expressly waived by the Lumber Company.

ARTICLE XIV. Upon a sale being made under a decree or order of such Court, the proceeds of such sale, together with any sums which may at the time of such sale be held by the trustee, or be payable to it under any of the provisions of this indenture as a part of the trust estate, shall be applied as follows:

1. The costs and expenses of the proceedings to foreclose this indenture, including the cost of procuring abstracts of title and tax statements, or extensions thereof, attorneys' fees and trustees' compensation, shall be first paid, and said costs and expenses and attorneys' fees and trustees' compensation shall be secured by this indenture.

2. All liens, taxes, assessments, rates and charges, and premiums of insurance paid by the trustee, with interest thereon as herein provided, and all disbursements or obligations made or incurred [54] by the trustee for the preservation or maintenance of the property herein mortgaged, or in making investigations, or otherwise as such trustee, shall next be paid in full before any payment shall be made on account of the principal and interest of the bonds secured hereby.

3. The remainder of the proceeds of sale shall then be applied ratably and equally to the payment of the principal and interest of the outstanding bonds secured hereby, with interest on the overdue instalments of interest, without preference or priority of any one bond over another, or of interest over principal, and without regard to the time at which any of said bonds may have been issued or to the person by whom they may be held.

4. Any surplus, after making the payments hereinabove provided for, shall be returned to the Lumber Company, its successors or assigns.

Upon any foreclosure sale of the property hereby mortgaged, or of any part thereof, the purchaser in making payment therefor shall be entitled, after paying in cash so much as shall be necessary to cover the costs and expenses of the sale, and of the proceedings incident thereto, including the trustees' reasonable compensation and attorneys' fees, and all other charges that may be decreed to be paid in cash, to use and apply any outstanding bonds and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons in order that there may be credited thereon such sum as shall be payable thereon out of the net proceeds of the sale; and proper receipts shall thereupon be given to the holders of such bonds and coupons for the amount so payable thereon, and the bonds and coupons, if the net proceeds of the sale shall be sufficient to pay them in full, with interest on overdue instalments of interest, shall be delivered up to the person making the sale for cancellation, or otherwise disposed of under the decree or order of the court; or if the proceeds of such sale shall not be sufficient to pay such bonds or coupons in full, with interest on overdue instalments of interest, then proper indorsement shall be made thereon of the amount so paid, and they shall then be returned to the holders. [55]

ARTICLE XV. The Lumber Company, for itself, its successors and assigns, hereby further covenants and agrees to and with the parties of the second

part, that at and immediately upon the commencement by the parties of the second part, or either of them, or their successors in trust, of any suit or other legal proceedings to obtain possession of the lands and property hereby mortgaged and conveyed, or any part thereof, or for the foreclosure of this mortgage, upon default, refusal, neglect, omission or failure upon the part of the Lumber Company, as herein provided, the Lumber Company, its successors and assigns, severally, shall and will, waiving the issuance and service of process, enter their voluntary appearance in such suit or proceeding and consent to the entry of an order for the possession of the said lands and property, and every part thereof, or to the appointment of a receiver of said lands and property and of the earnings, revenues, issues, profits and income thereof, for the sole benefit of the holders of the bonds secured hereby.

ARTICLE XVI. The Lumber Company shall and will, from time to time, on demand of the trustee, do, make, execute, acknowledge and deliver, or cause or procure to be done, made, executed, acknowledged and delivered, to the parties of the second part, or their successors in trust, all and every such further acts, deeds, mortgages, transfers and assurances for the better assuring, conveying, mortgaging and confirming to the parties of the second part, their successors and assigns, said property hereby mortgaged or conveyed, or intended so to be, as the trustee may be advised by its counsel are reasonably required for the better effectuating and carrying out of the objects, intent and purposes of this indenture, and

securing payment of the principal and interest of the bonds intended to be secured hereby.

ARTICLE XVII. The bonds secured by this instrument shall be certified and delivered by the trustee either to the president of the Lumber Company, whose receipt therefor shall be full [56] protection to the trustee for such certification and delivery, or to such other person or persons as he may in writing direct, whose receipt or receipts therefor shall in like manner be full protection to the trustee for such certification and delivery. The trustee shall be under no duty to look behind any such receipt, given as aforesaid, and shall not be in anywise responsible for the issue or negotiation of any bonds so certified and delivered, or the application of their proceeds.

ARTICLE XVIII. In case resort is had to any court to foreclose this mortgage on account of any default, refusal, neglect, omission or failure of the Lumber Company, a receiver of the mortgaged property may be appointed as a matter of course, upon application of the trustee, and the Lumber Company hereby assents to such appointment. The Lumber Company hereby consents, in the event of foreclosure, that a deficiency judgment or decree may be taken against it, under the laws of either of the States of Washington or California, or of the United States of America, to be satisfied from any other property of the Lumber Company, in case the decree or judgment of foreclosure is not satisfied at the sale of the mortgaged property.

ARTICLE XIX. In case of the resignation, incapacity or inability to act hereunder of said Detroit Trust Company, it shall be lawful for the holders of a majority in amount of the bonds secured hereby, then outstanding, to appoint a successor by a writing by them signed, or for any judge of a United States Circuit Court in the Ninth Circuit, in default of such appointment, to appoint such successor on the application of the holders of not less than one-fourth in amount of the bonds secured hereby, then outstanding. The Lumber Company may appoint a successor temporarily until a regular appointment is made in the manner hereinabove provided. Every such successor appointed in the place of said Detroit Trust Company, or its successor in trust, shall always be a trust company in good standing, doing business in the city of Detroit, Michigan, or in the city [57] of Chicago, Illinois, and having a capital stock and surplus aggregating at least one million dollars, if there be such a trust company willing and able to accept the trust upon reasonable and customary terms.

In case of the resignation, removal, incapacity or inability to act hereunder of the said Alexander McPherson, it shall be lawful for the said Detroit Trust Company, or its successor in trust, to appoint some male adult citizen of the United States to act as one of the trustees hereunder in his place.

In case of the resignation, inability or incapacity to act hereunder of said Detroit Trust Company, or its successor for the time being, and in case no successor has been appointed and until the appointment

of such successor, all the power herein given to said Detroit Trust Company shall for the time being vest in said Alexander McPherson, or his successor in trust, but the Lumber Company is not authorized in any event to make payments for the sinking fund to or make deposit of money for the redemption or payment of bonds or coupons with said Alexander McPherson or his successors in trust. And in case it shall be impossible, or be deemed impossible, by said Detroit Trust Company, or its successor for the time being, for it lawfully to do or perform any act or acts necessary or proper for it to do as trustee under the terms of this instrument, then and in such case said Alexander McPherson, or his successor for the time being, shall, with the permission in writing of said Detroit Trust Company, or its successor, have full power and authority to do and perform such act or acts of whatever nature as if he had been specifically authorized thereto. Any act so done by said Alexander McPherson or his successor in trust, shall have the same effect as if done by said Detroit Trust Company, or its successor, and shall relieve said Detroit Trust Company, or its successor, of any duty or obligation to do such act, except that any instrument given to release property from the lien hereof [58] under the provisions of Articles IV or V, or to discharge or cancel this instrument under the provisions of Article VIII hereof shall be signed by both parties of the second part, or their successors. Whenever said Alexander McPherson, or his successor, shall under the provisions of this Article exercise any of the powers or perform any of the duties granted to

the trustee by the terms of this indenture, he or his successor shall in reference to such exercise of power or performance of duty, be entitled to all the protection, immunity and recompense, both as to himself and his agents and attorneys, herein granted to the trustee in regard to such power or duty.

Any act herein required or authorized to be performed by the trustee may be performed by the trustee, or its successor in trust, and said Alexander McPherson or his successor in trust, jointly, and shall be so performed if such joint performance shall be necessary to the legality of such act. The trustee and said Alexander McPherson, or their successors, when so acting jointly, shall be entitled to all the protection, immunity and recompense herein granted to the trustee in reference to such acts.

Said Detroit Trust Company, its successors or assigns, shall have the power at any time by an instrument in writing, duly executed by its president or vice-president, and under its seal, to remove said Alexander McPherson, or his successor, from his position as one of the trustees hereunder.

ARTICLE XX. Either of the parties of the second part herein may resign and discharge itself or himself of the trust created by these presents by notice in writing to the Lumber Company, sixty (60) days before such resignation shall take effect, or such shorter time as may be accepted by the Lumber Company as adequate notice. But such resignation shall take effect upon the appointment of a successor in trust to such party of the [59] second part so resigning, if such successor in trust shall be ap-

pointed before the time limited by such notice.

ARTICLE XXI. In case any bond issued under this indenture, or any coupon thereto appertaining, shall become mutilated or destroyed, the party of the first part may issue, and thereupon the trustee shall certify and deliver a new bond of like tenor and date, and bearing the same serial number as the one mutilated or destroyed, in exchange for and in place of and upon cancellation of the mutilated bonds or coupons, or in lieu thereof and substitution for the same if destroyed. In case of the destruction of any bond or coupon issued hereunder, the applicant for the bond to be substituted therefor, shall furnish to the party of the first part and the trustee, evidence of the destruction of such bond or coupon so destroyed which evidence must be satisfactory to said party of the first part and to trustee in their discretion. And such applicant shall also furnish indemnity satisfactory to said party of the first part and the trustee in their discretion. And said applicant for such substituted bond, either in case of the mutilation or destruction of the bond or coupon for which the same is to be substituted, shall also pay all necessary expenses incurred by said party of the first part in the making and issuing of said substituted bond and coupons, including attorneys' fees, as well as all expenses incurred by the trustee in relation thereto.

ARTICLE XXII. The said Detroit Trust Company as trustee or otherwise, shall be under no obligation to recognize any person or persons, firm, association or corporation, as holder or owner of any

of the bonds secured hereby, or to do or refrain from doing any act pursuant to the demand or request of any person or persons, firm, association or corporation professing or claiming to be such holder or owner, until he, it or they shall make such demand or request in writing, and shall produce said bonds, and shall deposit them with the trustee, and shall indemnify and save harmless the trustee to its satisfaction from [60] any and all damages, costs and expenses, outlays, counsel fees and other reasonable disbursements for which it may become liable or responsible in carrying out said request or demand.

ARTICLE XXIII. Should any suit or proceeding be brought against the parties of the second part, or either of them, by reason of any matter or thing connected with the trust hereby created, or by reason of their being trustees hereunder, neither of them shall be under any obligation to appear in or defend such suit or proceeding until indemnified to its, his or their satisfaction for so doing, but may appear in and defend the same without indemnity, at their election, and in such case shall be compensated for so doing.

ARTICLE XXIV. The trustee, for itself and its successors, hereby accepts the trusts and assumes the duties hereby created and imposed upon it, but only upon the following terms and conditions, to wit:

(a) The trustee shall incur no liability to any one and shall be fully protected in acting upon any notice, request, consent, certificate, bond or other paper or document, believed by it to be genuine and to have been signed by the proper person.

(b) The trustee may select and employ in and about the execution of this trust, and especially to check up or verify any cutting of timber, to verify the value of any property to be released, to check up and examine and verify, in case of expenditures for repairs or rebuilding, where there may have been fire or other losses, suitable agents, attorneys, representatives and employees, whose reasonable compensation and expenses, including traveling expenses shall be paid by the Lumber Company to the trustee, and in default of payment of such compensation and expenses, they shall, with interest at seven per centum (7%) per annum, payable semi-annually, be a charge upon the hereby mortgaged property and premises, and the proceeds thereof, paramount to said bonds and payable immediately without demand, and the trustee shall not be answerable in any case for any act or default of any agent, attorney, representative or employee selected with reasonable discretion. The trustee, save for its gross negligence or willful default, shall not be personally liable for any loss or damage.

(c) The trustee shall have a first lien upon the mortgaged property and fund, for its reasonable expenses, counsel fees, compensation [61] and disbursements incurred in and about the execution of the trust hereby created and the exercise and performance of its powers and duties hereunder.

(d) The trustee shall be under no obligation or duty to perform any act hereunder unless requested in writing so to do and unless indemnified to its full satisfaction for so doing. The trustee shall not be

bound to recognize any person as a bondholder unless nor until his bonds are submitted to the trustee for inspection, or deposited with the trustee, if required, and his title satisfactorily established, if disputed.

(e) The exclusive right of action hereunder shall be vested in the trustee, except as hereinbefore provided, until refusal or failure or inability on its part so to act; and no bondholder shall be entitled to enforce these presents except as hereinbefore provided, until after demand made upon the trustee accompanied by tender of indemnity as aforesaid, and a refusal by the trustee to act in accordance with said demand.

(f) It shall be no part of the duty of the trustee to file or record this instrument or any instrument supplemental thereto, or renew the same, or to effect insurance against fire or other damage or risk on any portion of the mortgaged property, or to renew any policies of insurance, or to keep itself informed or advised as to the payment of any liens, taxes, assessments, rates or charges, or to pay the same or to require such payment to be made; but the trustee may, in its discretion, do any or all of these matters and things in this subdivision of this Article set forth, or require the same to be done, and any and all advances made by the trustee hereunder, in its discretion, shall constitute an additional indebtedness secured hereby, and shall be prior in lien to the bonds hereunder.

(g) The recitals of fact herein and in said bonds contained shall be taken as statements made by the Lumber Company, and shall not be construed as

made by the trustee; and the trustee assumes no responsibility as to the correctness of the same; nor is the trustee to be understood as making representations as to the character, extent or value of the mortgaged property, nor as to the title thereto, nor as to the character or condition of the lien created or imposed by this instrument.

(h) The sworn statement of any person believed by the trustee to be cognizant of the facts, accompanied by the written certificate of the president, vice-president, secretary or treasurer, for the time being, of the party of the first part, to the effect that he believes such statements to be true, may be received by the trustee as sufficient evidence of the payment of taxes or of any facts mentioned in the provisions of this instrument, [62] and shall be a full warrant to the trustee for any action taken by it on the faith thereof.

(i) Any money received by the trustee under any provision of this indenture may be held by it until it is required to pay it out conformably herewith without any liability for interest thereon, except as hereinbefore set forth.

(j) The trustee shall not be chargeable with notice of any default on the part of the party of the first part, except upon delivery to it, the said trustee, of a distinct specification in writing of such default by some person or persons interested in this trust, whose interest, if required, must be proved to the satisfaction of the trustee.

(k) The trustee shall not be personally liable for any debts contracted by it, or for damages to persons

or property involved, or for salaries or nonfulfillment of contracts during any period wherein it, the said trustee, shall manage the trust property or premises as herein provided; nor shall said trustee be liable or responsible for permitting or suffering the said company, its agents or servants, to retain or be in possession of, or manage, conduct or control the property hereby mortgaged, or intended so to be; nor shall said trustee become responsible for any destruction, deterioration, loss, injury or damage which may be done to said property by the said Lumber Company, its servants, or agents, or by any person or persons whomsoever, nor shall the said trustee be held responsible for the consequences of any breach of the said Lumber Company, its agents or servants, of any of the covenants, agreements or obligations herein or in said bonds contained, on the part of said Lumber Company to be kept and performed, nor for or on account of any acts of the said Lumber Company, its agents or servants of any kind, character or nature whatsoever.

ARTICLE XXV. The said S. E. Slade Lumber Company, for itself and its successors and assigns, does further covenant, bargain and agree with the said parties of the second part, their successors and assigns, that at the time of the ensealing and delivery of this instrument, the said S. E. Slade Lumber Company is well seized of the above described real estate in fee simple absolute, and that the same is free and clear of and from all incumbrances whatsoever; and that it will and its successors and assigns shall for-

ever warrant and defend the same against all lawful claims whatsoever. [63]

ARTICLE XXVI. The Lumber Company further agrees and covenants to cause this indenture to be duly and properly filed for record, both as real and chattel security, with all convenient speed.

ARTICLE XXVII. The Lumber Company agrees and covenants that it will at all times, as long as any of the bonds secured hereby are outstanding, give to the trustee and to its agents and representatives, free access to all of the property, books of account and vouchers of the Lumber Company for the purpose of checking the correctness of any statement made by the Lumber Company, or for the purpose of making any investigation desired by the trustee.

And the Lumber Company further covenants and agrees that it will at any time or times, at the request of the trustee, furnish to the trustee, within fifteen days after receipt by it of such request in writing, a statement verified by the oath of its president, secretary or treasurer showing accurately whether any taxes, assessments, rates or charges levied or assessed on the property hereby mortgaged, or any part thereof, or on any interest of the holders of the bonds or coupons hereby secured or any of them, or of the said parties of the second part, are due and unpaid, and if so, as to what property and the reason therefor and the amount thereof, and in similar fashion whether any tax sales have occurred affecting any of the property mortgaged hereby.

ARTICLE XXVIII. In case any of the remedies herein given or attempted to be given the trustee or

the holders of the bonds and coupons secured hereby shall at any time be held invalid, or any provision of this indenture or the bonds or coupons secured hereby shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining parts of this indenture or of such bonds or coupons, or the other remedies given hereby, but this indenture and said bonds and coupons shall be construed and enforced as if all such illegal or invalid provisions had never been inserted therein. [64]

In case any action is taken, by the parties of the second part or by either of them or by the bond holders in accordance with the terms of this instrument, to enforce the lien hereof or of the bonds and coupons secured hereby against the property hereby mortgaged, such action may be directed against all or any part or parts of the property hereby mortgaged, and no action against part of the property hereby mortgaged shall preclude further action in accordance with the terms hereof against the rest or other parts of such property, nor shall such action under any one of the Articles hereof be taken to preclude or prevent further action under the same or any other Article providing for the enforcement of the lien hereof or of the said bonds and coupons.

ARTICLE XXIX. It is understood and agreed that the word "trustee" as used in this instrument, unless otherwise expressly stated, shall be held and construed to mean Detroit Trust Company, or its successor, as above provided, and shall not include the said Alexander McPherson, or his successors in the trust hereby created, except in cases where the

provisions of Article XIX hereof shall apply, and that the words "parties of the second part" shall be held and construed to mean both parties of the second part and the successor or successors of them or either of them. And that the words "Lumber Company" or the words "party of the first part" shall be held and construed to mean the party of the first part, and its successors and assigns, in like manner and with like effect as if in each case the provisions containing the words "Lumber Company" or the words "party of the first part" had been made expressly to extend to or apply to the successors and assigns of the party of the first part.

In order to facilitate the recording of this instrument it may be executed simultaneously in two counterparts, each of which shall be declared to be an original, and they shall together constitute but one and the same instrument. [65]

For the convenience and at the request of the Lumber Company, this instrument has been duly executed and acknowledged by the parties hereto, or some of them, prior to September first, A. D. 1910, to take effect on September first, A. D. 1910.

IN WITNESS WHEREOF, S. E. Slade Lumber Company, party of the first part, has caused its corporate seal to be hereunto affixed and this instrument to be signed by its president and attested by its secretary for and in its behalf, and said Detroit Trust Company, party of the second part, to evidence its acceptance of the trust hereby created, has caused its corporate seal to be hereunto affixed and this instrument to be signed by its president and at-

tested by its secretary, and the said Alexander McPherson, to evidence his acceptance of the trust hereby created, has signed and sealed this instrument, all as of the first day of September, A. D. 1910.

S. E. SLADE LUMBER COMPANY.

By (Sgd.) S. E. SLADE,
President.

[Corp. Seal] Attest:
(Sgd.) A. H. COLE,
Secretary.

Signed and sealed by S. E. Slade Lumber Company in presence of

(Sgd.) J. B. BRIDGES.

(Sgd.) W. B. MACK.

DETROIT TRUST COMPANY,
By (Sgd.) ALEX. McPHERSON,
President.

[Corp. Seal] Attest:
(Sgd.) RALPH STONE,
Secretary. [66]

Signed and sealed by Detroit Trust Company in presence of

(Sgd.) IRVINE B. VUGER.

(Sgd.) JOHN BALLANTYNE.

(Sgd.) ALEX. McPHERSON. (Seal)

Signed and sealed by Alexander McPherson in presence of

(Sgd.) IRVINE B. VUGER.

(Sgd.) JOHN BALLANTYNE.

State of Washington,
County of Chehalis,—ss.

On this third day of September, A D. 1910, before me personally appeared S. E. Slade and A. H. Cole, to me known to be respectively the president and secretary of S. E. Slade Lumber Company, a corporation organized and existing under and by virtue of the laws of the State of California, and one of the corporations that executed the within and foregoing instrument, and severally acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath severally stated that they were authorized to execute said instrument and that the seal affixed to said instrument and purporting to be the seal of said corporation is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal]

(Sgd.) J. B. BRIDGES,

Notary Public in and for Said State of Washington.

Residence: Aberdeen. [67]

State of Washington,
County of Chehalis,—ss.

S. E. Slade, being first duly sworn, on oath says: That he is an officer, to wit, the president of S. E. Slade Lumber Company, the corporation named in and which executed the foregoing mortgage; that the

same was and is made in good faith, and without any design to hinder, delay or defraud creditors.

(Sgd.) S. E. SLADE.

Subscribed and sworn to before me this third day of September, A. D. 1910.

[Notarial Seal] (Sgd.) J. B. BRIDGES,
Notary Public in and for Said State of Washington.
Residence: Aberdeen.

State of Washington,
County of Chehalis,—ss.

A. H. Cole, being first duly sworn, on oath says:
That he is an officer, to wit, the secretary of S. E. Slade Lumber Company, the corporation named in and which executed the foregoing mortgage; that the same was and is made in good faith, and without any design to hinder, delay or defraud creditors.

(Sgd.) A. H. COLE.

Subscribed and sworn to before me this third day of September, A. D. 1910.

[Notarial Seal] (Sgd.) J. B. BRIDGES,
Notary Public in and for Said State of Washington.
Residence: Aberdeen. [68]

State of Michigan,
County of Wayne,—ss.

On this 23d day of August, A. D. 1910, before me personally appeared Alexander McPherson and Ralph Stone, to me known to be respectively the president and secretary of Detroit Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, and one of the corporations that executed the within and fore-

going instrument, and severally acknowledged the said instrument to be the free act and deed of said corporation, for the uses and purposes therein mentioned, and on oath severally stated that they were authorized to execute said instrument and that the seal affixed to said instrument and purporting to be the seal of said corporation is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires January 17th, 1911.

[Notarial Seal] (Sgd.) W. E. WINCKLER,
Notary Public in and for Said County of Wayne,
State of Michigan. [69]

State of Michigan,
County of Wayne,—ss.

I, W. E. Winckler, a Notary Public in and for said county of Wayne, do hereby certify that on this 23d day of August, A. D. 1910, personally appeared before me Alexander McPherson, to me known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 23d day of August, A. D. 1910.

[Notarial Seal] (Sgd.) W. E. WINCKLER,
Notary Public in and for Said County of Wayne,
State of Michigan.

My commission expires January 17, 1911.

(Filed Aug. 3, 1916.) [70]

*In the District Court of the United States, for the
Western District of Washington, Southern Divi-
sion.*

IN EQUITY—No. 67-E.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,
vs.

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON-HOOVER
LOGGING COMPANY, HUMPTULIPS
LOGGING COMPANY, FIRST FEDERAL
TRUST COMPANY, and MILTON R.
CLARK, Trustees, SLADE-WELLS LOG-
GING COMPANY,
Defendants.

Petition of Detroit Trust Co. et al.

The petition of Detroit Trust Company and Alexander McPherson, as trustees, respectfully shows unto this Honorable Court, as follows:

First. Your petitioners have lately filed their bill of complaint in this court and cause against S. E. Slade Lumber Company, William T. Cameron, Cameron-Hoover Logging Company, Humptulips Logging Company, First Federal Trust Company and Hilton R. Clark, Trustees, Slade-Wells Logging Company, praying among other things for the foreclosure of a certain mortgage or deed of trust heretofore and on September 1st, 1910, made by the above defendant, S. E. Slade Lumber Company, to your

petitioners as trustees, on certain real and personal property situate in the county of Grays Harbor, State of Washington, and more particularly [71] described in said bill of complaint, which mortgage or deed of trust secures first mortgage gold bonds dated September 1st, 1910, to the aggregate principal amount of \$1,000,000, which mortgage or deed of trust is now in default and of which bonds there now remains due and unpaid the aggregate principal amount of \$550,000.

Second. That in said mortgage or deed of trust it was expressly provided, especially in Article 18th thereof, that in case resort should be had to any court to foreclose same, a receiver might be appointed as a matter of course, and the S. E. Slade Lumber Company, the mortgagor therein, expressly assented to such appointment.

Third. That the property included in said mortgage comprises certain timber lands in Township 21 North, Range 9 West of the Willamette Meridian, in the county of Grays Harbor, State of Washington, and all timber standing or lying thereon, and also certain mill property in the city of Aberdeen, in said county, including a sawmill, planing-mill, and all the machinery, fixtures, and equipment therein, docks and wharves, and certain city lots in said city, and certain tide lands under lease from the State of Washington.

Fourth. That the timber lands included in said mortgage are not now being operated or logged in any manner. That the sawmill of the mortgagor defendant is not being operated and has not been

operated for two years.

Fifth. That the mortgagor defendant, as your petitioners are informed and believe, owes in excess of \$1,200,000, including its debt upon the bonds secured by the mortgage or deed of trust made to your petitioners. [72] That said defendant is insolvent in the sense that it is unable to meet its debts as they mature. That it is also insolvent in the sense that its property, if forced to sale at the present time, would not be sufficient to pay its debts. That said defendant has no funds with which to employ men to patrol the timber lands mortgaged to your petitioners and no money with which to properly protect and safeguard said mill property, or to pay the insurance thereon, and no money with which to pay taxes upon any of said property as said taxes accrue. That there are now lying upon the lands mortgaged to your petitioners in the neighborhood of 12,000,000 feet of logs, which are a part of your petitioners' security, and which have been cut and bucked for a considerable period of time, but which the mortgagor defendant has, through lack of funds, been unable to move to market, so that the value of same could be obtained.

Sixth. That the principal security for the payment of the bonds secured by the mortgage or deed of trust described herein is the timber on the lands covered thereby. That said lands when denuded of the timber thereon are of little value. That by reason of its financial condition the mortgagor defendant maintains no fire patrol whatsoever upon said property. That in the immediate vicinity of said

property are logged-over lands and also logging operations conducted by various other parties, which logging operations necessarily increase the danger of fires to the mortgaged property, which danger said mortgagor defendant is entirely unable to counteract by any patrol of its lands. That the Olympic National Forest Reserve, same being lands belonging to the United States, lies closely to the north of the mortgaged lands and that the danger of fire to the timber on [73] said reservation is greatly increased by the absence of a fire patrol upon said mortgaged lands, and by the failure to maintain logging operations thereon.

Seventh. That said mortgage contemplated that the bonds secured thereby should be paid by the payment into a sinking fund provided by said mortgage of the sum of \$3 per thousand feet of stumpage cut or removed from said property. That the mortgagor defendant has never had, and will not in the future have, any resources with which to pay said bonds unless the timber on its lands can be cut and sold, and that it is absolutely necessary that said timber be so cut and removed in order to pay said mortgage debt and also to pay the taxes accruing on said property from time to time, and the other charges incident to holding said property. That in order to maintain said mortgaged property as a going property and to keep same from deteriorating to such an extent as to make it insufficient in value to pay the debts of the mortgagor defendant and to prevent it from going to waste it is absolutely necessary to operate said property and to preserve and

maintain said mill and to keep both the timber property and the mill property in such a condition as to keep its value to the highest possible point. That the operation of said timber lands will not only furnish funds with which to pay taxes and other charges incidental to the holding of the property, but will also furnish considerable amounts of money for application upon the debt secured by the mortgage to your petitioners and will at the same time maintain upon said timber lands a force of men whose activities will include the necessary patrol of said property and its maintenance in good order, and will tend to [74] greatly lessen the danger of fire, not only to this property, and the security afforded thereby, but also to neighboring properties and especially to the United States Forest Reserve above referred to.

Eighth. That in and by said mortgage the rents, tolls, incomes, issues, earnings, and profits accruing from the mortgaged property were pledged in case of default to your petitioners as trustees, as will more fully appear from an examination of said mortgage attached to said bill of complaint.

Ninth. That the defendants to the bill of complaint filed in this cause are numerous and that a considerable period of time is bound to elapse pending the foreclosure of said mortgage. That during said period taxes will from time to time accrue and that your petitioners are fearful that the property will be taken away from them on tax sales unless provision is made by the appointment of a receiver for the protection of said property and for the ob-

taining of funds with which to pay taxes as they accrue. That during said period the mill and dock property and the machinery and equipment located therein and thereon will greatly deteriorate in value and there will be decided waste in regard to said mill and dock properties and said equipment and machinery unless provision is made for the maintenance of same by means of a receiver. That the machinery and equipment of said mill and on said dock is particularly apt to deteriorate in value and to be wasted unless it be properly cared for at all times, which the mortgagor defendant is wholly unable to do. That it is vitally necessary that the security of said mill and dock property be protected from loss by fire by insurance [75] premiums for which insurance said mortgagor defendant is absolutely unable to pay.

Tenth. That your petitioners are advised, and so aver, that if a receiver of said property is appointed by this court, said receiver can enter into a contract for the logging, driving, booming, rafting, towing, and selling of the timber on said property upon terms which, if acceptable to this court, will provide means sufficient not only to pay all taxes and other charges incidental to the holding of this property, but also to furnish considerable sums of money which can periodically be applied to the interest and principal due upon the mortgage to your petitioners.

Eleventh. That the mortgage of your petitioners provides among other things that the mill property covered thereby shall at all times be insured against

loss or damage by fire by a proper amount of insurance. That all reputable companies with which such insurance could be negotiated demand that the insured maintain at all times a force of watchmen upon the property and maintain at all times fires in the boilers connected with the property and maintain a proper sprinkling apparatus in good order. That the mortgagor defendant is entirely unable to furnish the funds with which to procure the requisite amount of insurance or with which to provide the safeguards which insurance companies demand before placing any insurance in force. That therefore it will be impossible to maintain insurance on the said property unless a receiver be appointed and authorized to operate the said properties as prayed for in this petition. That the destruction of said properties by fire would materially impair the security granted to your petitioners and would greatly cripple the mortgagor defendant and impair, if it did not destroy its [76] ability to meet its obligations. That on the last appraisal of the mill properties of the mortgagor defendant by the General Appraisal Company for insurance purposes, said property was appraised at approximately \$400,000.

Twelfth. That there have been built upon the timber lands covered by the mortgage herein referred to a number of skid roads at a considerable cost. That these skid roads are largely constructed of logs which belong to your petitioners. That said skid roads are rapidly deteriorating in value and unless put to use in the near future the logs with which same are constructed will entirely lose their value and it

will become necessary to use an equal amount of new logs to construct new skid roads. That there has been spent on said mortgaged property for improvements to facilitate logging and lumbering same upwards of \$50,000, the value of which improvements will be largely, if not entirely lost to the mortgagor defendant unless said property is operated and the timber thereon cut and removed within the near future.

Thirteen. Your petitioners present to the Court in support of the allegations of this their petition, sundry affidavits, and especially the affidavits of John C. Ainsworth, William J. Patterson, H. D. Langille, Almerion P. Stockwell, and George B. Perry, which affidavits are attached hereto and hereby expressly made a part hereof.

WHEREFORE, your petitioners pray :

First. That upon giving bond in such sum as the court may direct, running to the clerk of this court, with surety approved by him, conditioned for the faithful performance of his duties as such receiver, George L. McPherson, [77] of the city of Portland in the county of Multnomah, State of Oregon, be appointed receiver of the property covered by said mortgage, with full power to hold the same in his possession, custody, or control until the further order of this court, and with further power to take possession, care for, and conserve the properties described in the bill of complaint, and in the mortgage aforesaid, and with further power to manage and operate the properties covered by said mortgage, either by

logging contract or otherwise, as he may deem advisable, and with further power to receive and collect the rents, incomes, issues, earnings, and profits of said mortgaged properties, whether the same are now due or will hereafter become due and payable, and with further power to do such things, enter into such agreements, employ such agents in connection with the management, care, preservation, and operation of said mortgaged properties as he may deem advisable, and to incur such expense and make such disbursements as in his judgment may be advisable or necessary in connection with the care, preservation, operation, and maintenance of said mortgaged properties until the further order of this court, and to disburse the moneys from time to time received from the rents, incomes, issues, earnings, and profits of and from said mortgaged properties and from the operation thereof under the further orders of this court.

Second. That your petitioners may have such other and further relief in the premises as to this court shall seem proper, and your petitioners will ever pray.

DETROIT TRUST COMPANY and ALEX-
ANDER McPHERSON, as Trustees.

By GEORGE B. PERRY,

Their Agent and Attorney.

SNOW, McCAMANT & BRONAUGH,
MILLER, SMITH, CANFIELD, PADDOCK
& PERRY,

Solicitors for Petitioners. [78]

United States of America,
District of Oregon,
County of Multnomah,—ss.

George B. Perry, of Detroit, Michigan, being duly sworn, deposes and says: That he is the agent and attorney of Detroit Trust Company and Alexander McPherson, as trustees, the petitioners named in the above petition. That both of said petitioners are absent from the States of Oregon and Washington and are citizens of the State of Michigan and residents of the city of Detroit in the county of Wayne in said State, and that neither of said petitioners is at the present time either in the State of Oregon or in the State Washington and have no agent or representative in either of said States other than this deponent. That this deponent has investigated the facts connected with the averments of said petition and has had principal charge of all of the proceedings in the cause in which this petition is filed for these petitioners. That such knowledge as the petitioners have of the facts stated herein has been obtained in the main from information gained by this deponent. That deponent has read the above petition by him subscribed as agent and attorney for said petitioners and knows the contents thereof and that the same is true except as to those matters therein stated to be on information and belief and as to those matters he believes it to be true.

GEORGE B. PERRY.

Subscribed and sworn to before me this 2d day of August, A. D. 1916.

EDNA HUBER,
Notary Public for Oregon.

My commission expires the 17th day of June 1920.
[79]

We hereby assent to the prayer of the above petition and consent that this court may make an order based thereon and as prayed for.

S. E. SLADE LUMBER COMPANY,
HUMPTULIPS LOGGING COMPANY,
SLADE-WELLS LOGGING COMPANY,
By BRIDGES & BRUENER,
Their Solicitors.

(Filed Aug. 4, 1916.) [80]

*In the District Court of the United States for the
Western District of Washington, Southern Division.*

IN EQUITY—NO. 67—E.

DETROIT TRUST COMPANY and ALEX-
ANDER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON-HOOVER LOG-
GING COMPANY, HUMPTULIPS LOG-
GING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R. CLARK,
Trustees, SLADE-WELLS LOGGING COM-
PANY,

Defendants.

Order Appointing Receiver of S. E. Slade Lumber Co.

The above-entitled cause came on to be heard this day upon the plaintiffs' bill and petition for receiver, the prayer of which petition was supported by proofs and by arguments of Wallace McCamant, Esq., solicitor and of counsel for the plaintiffs, and consented to by Theodore B. Bruener, Esq., one of the solicitors for the defendants S. E. Slade Lumber Company, Humptulips Logging Company and Slade-Wells Logging Company; and

WHEREAS, it appears that sufficient cause exists for the appointment of a receiver;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES IT IS ORDERED, ADJUDGED AND DECREED:

First. That upon giving bond in the sum of \$50,000 running to the clerk of this court, with surety approved by him conditioned for the faithful performance of his duties as such [81] receiver, George L. McPherson be and he hereby is appointed receiver of the real and personal property covered by the mortgage or deed of trust sought to be foreclosed in this proceeding, with full power to hold the same in his possession, custody and control, and to take possession, care for and conserve same, and with full power to manage and operate all or any part of the properties covered by said mortgage or deed of trust, either by logging contract or otherwise, as he may deem advisable, and with full power

to receive and collect the rents, incomes, issues, earnings and profits of said mortgaged properties, whether the same are now due or will hereafter become due and payable, and with full power to do such things, enter into such agreements and employ such agents and attorneys in connection with the management, care, preservation and operation of said mortgaged properties, or any part thereof, as he may deem advisable from time to time, and to incur such expense and make such disbursements from time to time as in his judgment may be advisable or necessary in connection with the care, preservation, operation and maintenance of said mortgaged properties, or any part thereof, and with full power to disburse the moneys from time to time received by him from the rents, incomes, issues, earnings and profits of and from said mortgaged properties, or any part thereof, and from the operation thereof, all until the further order of this court.

Second. That said receiver as soon as possible obtain the necessary information and prepare and submit to the Court for its consideration an inventory of the real and personal property covered by said mortgage or deed of trust and in his possession as such receiver. Said receiver is not to sell or dispose of any of the assets or property in his possession hereunder or make any contract for the logging of the timber lands covered by said mortgage or deed of trust without specific authority or without submitting the proposed logging contract to this Court for its [82] approval.

Third. And said receiver is hereby further authorized to do all things which may be incidental, necessary or convenient for the purpose of carrying into effect the objects of his receivership as hereinbefore set forth, including the employment of competent counsel and attorneys, and he is hereby required to keep a careful account of all moneys received and expenses incurred by him in the premises, and to make report to this Court from time to time of his doings in the premises, and said receiver has leave to apply to this Court at any time hereafter for such further orders or directions as may be necessary.

Dated this 4th day of August, A. D. 1916.

EDWARD E. CUSHMAN,

District Judge.

(Filed August 4, 1916.) [83]

*In the District Court of the United States for the
Western District of Washington, Southern Division.*

No. 67-E.

DETROIT TRUST COMPANY and ALEX-
ANDER McPHERSON, as Trustees,
Plaintiffs,
against

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON-HOOVER LOG-
GING COMPANY, HUMPTULIPS LOG-
GING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R. CLARK,
Trustees, SLADE-WELLS LOGGING COM-
PANY,

Defendants.

**Petition of Receiver of S. E. Slade Lumber Re Con-
tract with Humptulips Logging Co.**

To the Honorable EDWARD E. CUSHMAN, Judge
of the Above-entitled Court:

The petition of George L. McPherson, the duly ap-
pointed and qualified receiver of the defendant, S. E.
Slade Lumber Company, respectfully recites that
Humptulips Logging Company is willing to enter
into a contract with the receiver in words and figures
as per the proposition hereto annexed, marked Ex-
hibit "A" and made a part of this petition, that your
petitioner has investigated the responsibility of
Humptulips Logging Company, and believes that it
is able to fulfill the obligations assumed by it in ac-

cepting the proposition set forth in Exhibit "A." Your petitioner believes that it is to the interest of the estate that such a contract be consummated,

WHEREFORE YOUR PETITIONER PRAYS, that leave be granted him [84] to enter into such contract with Humptulips Logging Company.

GEORGE L. McPHERSON,
Receiver.

Western District of Washington,
Southern Division,—ss.

I, George L. McPherson being duly sworn do depose and say that I am the petitioner above named, and that the foregoing petition is true as I verily believe.

GEORGE L. McPHERSON.

Subscribed and sworn to before me this fourth day of August, 1916.

FRANK L. CROSBY,
Clerk of the U. S. District Court for the Western
District of Washington, Southern Division.

By F. M. Harshberger,
Deputy.

(Filed August 4, 1916.) [85]

**Exhibit "A" to Petition—Letter to Humptulips
Logging Co. Re Logging Contract.**

Humptulips Logging Company,
Aberdeen, Washington.

Gentlemen:

I make you the following proposition to log the timber lands of the S. E. Slade Lumber Company, in Township 21 North, Range 9 West of Willamette

Meridian, Grays Harbor County, Washington, and to place the logs in the flow of the Humptulips River, and to procure the driving of said logs to the booms at the mouth of said River, and thereafter to procure the rafting and towing of said logs to the various marketing points on Grays Harbor, and to market or sell said logs and account for the proceeds thereof, all as hereinafter provided.

I will grant you the exclusive right to enter upon said lands for the purpose of cutting and removing the timber thereon. . You will forthwith so enter and proceed to place in the flow of said River the felled and bucked logs, now on said lands, and further proceed to log and lumber said lands of all merchantable timber thereon, clean as you go, and cutting timber from such subdivisions as will not in the opinion of receiver, depreciate the value of the remaining timber, and place the logs (except such timber as may be used by you for skid roads and other purposes necessary in the operation) in the flow of the said River as rapidly as possible, all in a thoroughly business-like manner and according to approved logging and lumbering practice, and all to my satisfaction. You are to conduct an operation sufficiently extensive to enable you to place, and by accepting this offer you expressly agree to place at least 50 million feet, board measure, camp scale (by the scale from time to time in use on Grays Harbor) of logs from said lands in the flow of said River in each twelve months the contract continues, such amount to be placed in said River in as near equal quantities as may be in each period of four months. Each log is to be scaled

board measure (by the scale from time to time in use on Grays Harbor) by you before being placed in the flow of said River (this is the scale herein sometimes referred to as "camp scale"). I am to be at liberty at any time to inspect all of your logging and lumbering operations and all of your books and records pertaining to this transaction, and I am to have the right at any time to check any camp scale or selling scale (hereinafter referred to) made by you or to make one of my own, if I so desire. Each log before being placed in the flow of said River is to be branded with distinguishing marks, recorded from time to time in the County Recorder's office at Montesano. Such marks shall show in an appropriate way the section from which the log was cut and the month and year of the cutting. Thus 8-16 would designate a log cut from Section 27 in August, 1916.)2(
)7(

You to procure that all of the logs, after being placed by you in the flow of said River, will at all times be driven to booms controlled by you at the mouth of said River with all possible dispatch and according to approved driving practice, all to my satisfaction, and that insofar as is possible, the logs from said lands, when rafted, will be rafted separate and distinct from all other logs. You will at all times procure that said River is kept in a drivable condition and as free as possible from obstructions to the [86] prompt passage of logs down the booms and at least once in each year you will thoroughly “sack” said River and clean up the logs hung up therein , or on the banks thereof,

You are to market and sell all of said logs cut and removed from said lands at the highest market prices obtainable by you, and to procure the rafting and towing of said logs from the booms to the various marketing or selling points. You to scale the logs at the various marketing or selling points by the scale from time to time in use on Grays Harbor (this is the scale herein sometimes referred to as "selling scale"). You to keep a boom record showing the number of each raft leaving your booms, the number of pieces in each said raft and the marks on each piece. I to have access at all times to all such records and also to the records of the company doing the driving, rafting and towing, showing the number of feet of logs from said lands on which it claims charges and the numbers of the rafts on account of which the charges are made. In case any dispute arises over the selling scale or the grades of any raft between you and any purchaser, I must have the right to approve of the referee to whom the settlement of the dispute is left, if any.

None of the logs from said lands are ever to be sold by you for less than \$4.30 per M feet board measure, selling scale net, (this is after all discounts have been deducted).

You are to sell the logs from said lands only for cash or 90 day paper. Out of the purchase price the purchaser shall remit direct to the company doing the driving, rafting and towing for its charges, which shall be \$1.25 per M. feet on the selling scale for all logs delivered and sold at either Aberdeen or Hoquiam, and \$1.30 per M feet on the selling scale for all

logs delivered and sold at Cosmopolis. We jointly to notify every purchaser of logs on Grays Harbor that every log bearing our distinguishing marks is my property and that settlement therefor is to be made by the purchaser to Hayes & Hayes, Bankers at Aberdeen, Washington. You to see that the balance of the purchase price of any raft of the logs from said lands (after driving, etc., charges have been deducted and paid by the purchaser) if paid in cash or by check or draft, less the cash discount of 2%, is made payable to said Hayes & Hayes, Bankers, and is received by you and by you turned over to said Hayes & Hayes, Bankers, and by them placed in a fund specifically designated to identify it with this contract, and called Humptulips Logging Company, George L. McPherson Receiver Fund, all within two weeks from the date of the delivery of the raft sold to its purchaser. If said balance of the purchase price (not deducting any discount) is paid by 90 day paper, you to see that all such paper is made payable to Hayes & Hayes, Bankers, and that all such paper is received by you and that you procure the discount thereof and the deposit in cash of the face of the paper (less 2% discount) in the specially designated fund in Hayes & Hayes, Bankers, all within two weeks from the date of the delivery of the raft sold to its purchaser. I am not to be asked to accept any 90 day paper or anything other than cash, and I am to be in no way liable on the acceptance or discount of any 90 day paper by you, either for yourself or for any company involved in the performance of this contract. You to guarantee the payment of any

such paper taken by you or by any such company, and you also to guarantee that there shall be deposited in such special fund, in cash, the full purchase price of each raft sold, less the driving, rafting and towing charges and less the 2% discount, within two weeks from the date of the delivery of each such raft.

You are to furnish said Hayes & Hayes, Bankers, and me, forthwith, duplicates of each selling scale sheet. Each such sheet [87] shall show the date of the delivery of the raft sold, its number, the number of thousand feet board measure of each grade of logs in the raft, the prices at which the logs were sold, the distinguishing marks on said logs and the number of thousand feet board measure of each grade of logs in the rafts which did not come from the lands here in question if any such there be.

On or before the tenth day of each month you will furnish said Hayes & Hayes, Bankers, and me a statement showing your actual logging expense per thousand feet board measure, camp scale for the last preceding calendar month. Logging expense will consist of pay-roll of Superintendent and crew, mess house and commissary loss, if any, accounting, right of way charges by others, repair of machinery used upon this work and property and replacement of parts thereof, replacement or purchase of tools or cables used in the operation, construction of dams for landing ponds upon the property, construction of skid roads, telephone expense, operation of Superintendent's auto and of motor truck, construction and upkeep of wagon roads on the property, workmen's compensation insurance and such other charges as

are from time to time properly a part of your logging expense on this particular operation. In this connection it is understood that you will keep an accurate account of your actual logging expense and such account shall at all times be subject to my revision and correction. Also that you will put your present equipment, machinery, tools and cables on the property without cost to me and that no charge will be made against me for the use of same, or for the use of present camps, dams and skid roads, either by way of depreciation or otherwise. Also that you may acquire any rights of way from others necessary for the moving of the logs to the River, subject to my approval.

On or before the fifteenth day of each month you to see that Hayes & Hayes, Bankers, distribute so much of the specially designated fund as represents the deposited proceeds of all logs sold and delivered during the preceding calendar month in the following order of priority:

First. Pay me \$3.00 per M feet on the basis of the selling scale referred to.

Second. Pay you \$3.60 per M feet on the basis of said selling scale, on account of your actual logging expense per M camp scale for that month, or such proportion of said amount per M feet selling scale as the balance remaining to be distributed for that month will pay.

Third. Pay you any balance up to \$1.00 per M feet, for all logs sold and delivered during that month on the basis of said selling scale.

Fourth. Pay me any balance.

All withdrawals from the fund shall be made on the joint order of Humptulips Logging Company and George L. McPherson, Receiver.

Before the 20th day of each 5th month hereafter we to determine your actual average logging expense per M feet board measure camp scale, for the period of the four calendar months immediately [88] preceding. This figure when arrived at, we shall certify to said Hayes & Hayes, Bankers, and such certificate shall state the months for which the actual average logging expense have been so determined and the actual amount of money which you have been overpaid or underpaid on account of your actual logging expense for the four calendar months immediately preceding on logs cut, sold and delivered during that period. If you have been overpaid, you shall forthwith pay me the amount of such overpayment and in default thereof same shall be deducted from the next monthly payment payable to you as herein provided. If you have been *been* underpaid I shall forthwith pay you any balance due you thereon, provided I have received sufficient moneys therefor during said four months period under item Fourth above, for logs cut, sold and delivered by you during said period but not otherwise. Each such four months settlement btween us as successively made shall constitute a full, complete and final settlement for that entire period. Thereafter the actual average logging expense for that period as so ascertained shall be substituted for the figure \$3.60 in the Second item above as to any logs sold and delivered which were cut in that period and as to any such logs

you shall be paid each month such part of such actual average logging expense as the moneys distributable that month under the Second item per M feet on the basis of the selling scale will pay and no more. And in no event shall you receive in all on account of your actual average logging expense over any four months period more than your actual total logging expense for such period as shown by your statements approved by me.

For all of their services under this agreement, you are to see that Hayes & Hayes, Bankers, make no charge to me and that they make remittances to me in New York or Chicago exchange at par, if so requested.

The payments herein provided to be made to you or to other companies connected with the performance of this undertaking from time to time, comprise all of the payments to be made to you, or to any other company so connected for the full and complete performance of your undertakings hereunder.

Should I at any time so desire, I may request you to hold a certain amount of logs in your booms for a certain period, provided I make arrangements therefor satisfactory to you, and in case I am able at any time to sell any of the logs on the property before they are put in the flow of the river, at a price which will return to me at least \$3.00 per M feet board measure, net, together with a sum of money sufficient to pay your logging expense thereon and your \$1.00 profit, I reserve the right to sell any of such logs upon paying you such logging expense and such profit thereon, but in no instance shall this be done unless I

have in hand from the purchaser of any such logs, a sum of money sufficient to pay me at least my \$3.00 and you your logging expense and profit thereon.

You are to account to me from time time as this contract progresses for the number of thousand feet of logs board measure, taken from said property, according to the camp scale, but in any such accounting, if there is any discrepancy, I am to take into consideration and give you the benefit of the opportunity for clerical mistakes on the part of your scalers and of the over-scaling occasioned by the rivalry between different logging crews and of the difference in scale which might naturally exist between a camp scale and a selling scale. [89]

This agreement shall continue in full force and effect until the above described lands have been completely logged and lumbered, but it may be cancelled by either party hereto at any time, for any reason satisfactory to the party cancelling, upon 60 days (by this is meant days in which work can be done) written notice of such cancellation to the other party. In the event of any such cancellation. I am to be at liberty to notify you to forthwith stop all possible logging expense of every kind and to bend your entire energies to drawing into the flow of the River all felled timber in the woods and to so clear up your operations as to minimize the danger of fire. In case of any such cancellation by either party, we shall forthwith attempt to arrive at a full, complete and final settlement of all matters between us on account of this contract, but if no such settlement can be arrived at, then it is understood that while further

logging operations shall cease, you are still obligated to drive the logs in the flow of the River to the booms and to raft, tow and sell the same, if I so desire, and account for all the proceeds all in the manner provided for herein, and in no event shall any cancellation operate to take from you the right to get your driving, rafting and towing charges and your logging expense and your \$1.00 out of said logs, if same can be obtained by you out of the sale of said logs, after the payment of the \$3.00 per M, all as provided for herein.

In case I cancel this contract for any reason other than your failure to perform the same in accordance with its terms, I agree to pay you your actual expense in moving your equipment into the green timber, not to exceed \$1.000

Nothing contained in this agreement shall be construed as in any way changing the ownership of any of the logs referred to herein from the S. E. Slade Lumber Company, or from me as its Receiver, until any such logs are sold and delivered to their respective purchasers for a price sufficient to return to me at least \$3.00 per thousand feet board measure, on the basis of the selling scale, which sum of money must be ensured to me before any payment is made on account of any lien or claim for driving, rafting and towing charges, and which sum of money must be paid to me in every instance before any payment is made to you on account of your logging expense or your profit.

In accepting this contract, it is understood that you agree that if property covered hereby is sold, you will

sell your complete logging and lumbering outfit upon the property, including all equipment, machinery, camps, tools and cables, and all your interest in landing ponds, skid roads and rights of way upon the property, to the purchaser for \$50,000 cash, provided that request for same is made to you either by me or S. E. Slade Lumber Company within thirty days of the sale.

Your acceptance of this offer will constitute the contract between us.

Yours truly,

_____. [90]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 67—E.

DETROIT TRUST COMPANY and ALEX-
ANDER McPHERSON, as Trustees,
Plaintiffs,

against

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON-HOOVER LOG-
GING COMPANY, HUMPTULIPS LOG-
GING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R.
CLARK TRUSTEES, SLADE-WELLS
LOGGING COMPANY,

Defendants.

**Order Authorizing Receiver of S. E. Slade Lumber
Co to Enter into Contract with Humptulips
Logging Co.**

On reading and filing the petition of George L. McPherson, receiver of S. E. Slade Lumber Company, on the terms provided in the draft of a proposition therefor attached to said petition and on hearing Wallace McCamant, Esq., attorney for said receiver in support therefor it is now here ordered that said receiver be and he hereby is authorized to enter into a logging contract with Humptulips Logging Company on the terms contained in said proposition.

EDWARD E. CUSHMAN,

Judge.

Dated August fourth, 1916.

(Filed August 4, 1916.) [91]

*In the District Court of the United States for
the Western District of Washington, Southern
Division.*

IN EQUITY—No. 67.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON—HOOVER
LOGGING COMPANY, HUMPTULIPS
LOGGING COMPANY, FIRST FEDERAL

TRUST COMPANY and MILTON R.
CLARK, Trustees, SLADE-WELLS LOG-
GING COMPANY,

Defendants.

**Petition of the First National Bank of San Francisco
et al.**

To the Honorable Judges of the Above-named Court :

Come now The First National Bank of San Francisco, the Coats-Fordney Logging Company and the Saginaw Timber Company, and allege that they are creditors of the defendant S. E. Slade Lumber Company in the following amounts, to wit: The First National Bank of San Francisco in the sum of \$231,150, the Coats-Fordney Logging Company in the sum of \$40,714.02, and the Saginaw Timber Company in the sum of \$9,747.20, which sums are secured by a certain mortgage or trust deed executed by the S. E. Slade Lumber Company to the First Federal Trust Company and Milton R. Clark, trustees, covering the premises described in plaintiffs' complaint and in the mortgage, a copy of which is attached thereto, and executed and recorded subsequent to the plaintiffs, Detroit Trust Company and Alexander McPherson, trustees.

That the said First Federal Trust Company and Milton R. [92] Clark, Trustees, as aforesaid, are, under the said terms of mortgage or trust deed, under no obligation to perform any duty thereunder unless requested so to do in writing by the duly appointed representatives of The First National Bank of San Francisco, the American National Bank of San Francisco, and Welch & Company, respectively,

and have not appeared in or taken any action in the premises; and your petitioners aver that the said American National Bank of San Francisco and Welch & Company, by their respective representatives, have joined in a request for the appointment of a receiver herein with power to operate and refused to join with your petitioners herein or to request the said trustee to act in the premises herein.

That for the protection and preservation of the rights and interest of your petitioners herein, they respectfully petition this Court as follows:

1.

That so much of the order made and entered in this cause on the 4th day of August, 1916, appointing George L. McPherson as receiver of all the property and assets of the S. E. Slade Lumber Company, as purports to authorize and empower the said receiver to carry on and operate the properties of the defendant S. E. Slade Lumber Company, be vacated and set aside, for the reasons and upon the grounds following, to wit:

First. That the properties of said mortgagor defendant consist of a large mill plant and a large amount of timber lands, and under its charter powers it is authorized to carry on and operate said mill property and carry on and conduct the business of logging said timberlands; that your petitioners aver that for more than one year said properties have been idle and said defendant S. E. Slade Lumber Company has not conducted or carried on the business aforesaid, or any part thereof. [93]

Second. That this Court is without authority or

power to authorize its receiver of an insolvent corporation to begin and carry on the business authorized to be conducted by such corporation when the same is not, at the time of the appointment of such receiver, being carried on or conducted by such insolvent corporation.

Third. That it has not been made to appear and it is contrary to the fact that it is necessary for the full preservation of the entire assets of said insolvent corporation that the authorized business of such corporation be carried on by said receiver.

Fourth. That it will be necessary to make extensive repairs and provide large equipment to enable said receiver to begin and carry on the business of said insolvent corporation, a business which it was compelled to abandon because it was unprofitable.

Fifth. That the nature and character of the business of said insolvent corporation, for which it was created and which it was authorized to conduct under its charter, and the nature and character of the properties owned and formerly operated by it are such that the operation thereof by the receiver would not only involve a large expenditure of money, but would likewise necessarily involve the long continuance of said receivership, and thus interfere with and prevent the speedy determination of this cause and the judicial disposal of the assets of the said insolvent defendant for the payment of its creditors.

II.

That the *ex parte* order made and entered in this cause on the 4th day of August, 1916, immediately upon the appointment of said receiver, which pur-

ports to authorize said receiver to enter into a contract with the Humptulips Logging Company for the logging of all the timberlands covered and described in the mortgages given by the defendant S. E. Slade Lumber Company to the plaintiffs herein and to the said First [94] Federal Trust Company and Milton R. Clark, Trustees as aforesaid, a copy of which proposed contract is set forth in the petition upon which said order is based, be vacated and set at naught, and that any contract made by the receiver in pursuance thereof be cancelled and rescinded, for the reasons and upon the grounds following, to wit:

First. That the making and performance of said contract will involve the continuance of said receivership over a long period of time, to wit, approximately ten years, and will necessarily prevent the speedy determination of this cause, and that it is, therefore, unauthorized and void.

Second. That if said receiver is permitted to make and carry out said contract, it will result in the gradual conversion and disposal of the timber which constitutes nearly the whole of the valuable assets of the defendant S. E. Slade Lumber Company, which will be converted and disposed of over a long period of time for the benefit of plaintiffs and the parties to said contract, and will prevent the winding up of the affairs of said insolvent corporation and the conversion of its assets into money by the ordinary judicial processes of the Court herein.

Third. That under the terms of said proposed

contract, the assets of said corporation and the disposition thereof will be withdrawn from the immediate supervision and control of the Court, and undue and unrestricted authority and power over said assets will be invested in said receiver.

Fourth. That the terms and provisions of said contract are reckless and improvident, as appears upon the face thereof, and in this, that it in fact authorizes and permits certain undue and unreasonable profits and gains to the said Humptulips Logging Company; all as will more fully be made to appear upon the hearing hereof. [95]

Fifth. That the said Humptulips Logging Company and the officers and stockholders thereof are so related to and identified with the defendant S. E. Slade Lumber Company that the same is an unfit and improper party to invest with the authority and power conferred by said proposed contract to log and dispose of all the timber covered by said mortgages in the manner and upon the terms and conditions as set forth in said proposed contract.

And your petitioners pray that an order be entered herein directing said receiver to appear before this Court, at a time to be fixed by it, and show cause why this petition be not granted, and that at such hearing these petitioners be permitted to intro-

duce proofs in support hereof, both orally and by affidavit.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO.

By HUGHES, McMICKEN, DOVELL &
RAMSEY,

Its Solicitors.

COATS-FORDNEY LOGGING COMPANY.
SAGINAW TIMBER COMPANY.

By JOHN C. HOGAN,
Their Solicitor.

United States of America,
Western District of Washington,—ss.

E. C. Hughes, being first duly sworn, on oath deposes and says: That he is one of the solicitors for the First National Bank of San Francisco, a corporation, one of the petitioners named in the foregoing petition; that he makes this affidavit [96] in verification of the said petition on behalf of said petitioners, for the reason that there is no officer or agent of any of said petitioners within said district; that he has read said petition, knows the contents thereof, and believes the same to be true.

E. C. HUGHES.

Subscribed and sworn to before me this 14 day of August, A. D. 1916.

[Notary Seal] JOHN P. GARVIN,
Notary Public in and for the State of Washington,
residing at Seattle.

(Filed August 14, 1916.) [97]

*In the District Court of the United States, Western
District of Washington, Southern Division.*

No. 67—E.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON - HOOVER
LOGGING COMPANY, HUMPTULIPS
LOGGING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R.
CLARK, Trustees, SLADE-WELLS LOG-
GING COMPANY,

Defendants.

Memorandum Decision.

Filed August 28, 1915.

CUSHMAN, District Judge.

While the full authority of a court equity should be sparingly exercised, it is considered that, in a proper case, its power is sufficient to support the order attached by the petition of certain of the creditors of the S. E. Slade Lumber Company, secured under the third mortgage.

The further question raised by the petition is the propriety of such an order. Under the contract made by the receiver with the Humptulips Logging Company, any risk of loss to those interested in the property appears much less than it would be under any other arrangement. It further appears that there

is substantial danger of the security becoming inadequate unless the course adopted is pursued, and it appears that, under present conditions, a forced sale of the property would result in a sacrifice of much of its real value. This is not only shown by the affidavits [98] which have been filed, but by the conduct of the parties in interest.

If there is ought to shock the conscience, or anything to prejudice the interest of those secured under the third mortgage, it is inconceivable that the majority in number and amount of those secured, would petition—as they have done—to the Court for the order already made. Such creditors have had, in all respects, as good an opportunity to know the circumstances and prospects as the objecting creditors and, owing to the nearer residence of the consenting creditors to the property involved, in many respects, they are in a better position to know the conditions than certain of the objecting creditors.

The petition to vacate the order will be denied; but it will be modified in the following respects:

The receiver will not undertake to operate the property without the further order of the Court, except to the extent necessarily incident to the supervision of the logging contract made with the Humptulips Logging Company;

The orders and contract shall be without prejudice to the right of any party interested to seek to establish—should he hereafter see fit so to do—the ownership of the Humptulips Logging Company by the defendant, the S. E. Slade

Lumber Company, or any interest therein less than ownership.

Owing to the fact that the interests of all parties require the speediest possible settlement of the questions in dispute, as a condition of the denial of the petition to vacate the order, the receiver and parties other than the objecting creditors are required to stipulate with the latter for the hearing of any appeal from this order to the Court of Appeals at the October term of the present year.

(Filed Aug. 28, 1916.) [99]

*In the District Court of the United States for
the Western District of Washington, Southern
Division.*

No. 67—IN EQUITY.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,

Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY et al.,

Defendants.

**Order Granting Leave to Petitioners to Intervene,
etc.**

The First National Bank of San Francisco, the Coats-Fordney Logging Company and the Saginaw Timber Company, petitioners herein, having presented their petition for leave to amend their original petition herein and for a rehearing thereof, said petitioners appearing by their solicitors, E. C. Hughes and John C. Hogan, and the defendants, S. E.

Slade Lumber Company and Humptulips Logging Company appearing by their solicitors, Bridges & Bruener, and the plaintiffs and the receiver heretofore appointed herein appearing by their solicitors, Snow, McCamant & Bronaugh;

IT IS HEREBY ORDERED by the Court that said petitioners be and they are hereby granted leave to file their said petition as intervenors herein, and that a rehearing of their said petition, as amended, be had at a time to be hereafter fixed by this Court.

Done in open court this 21st day of October, 1916.

EDWARD E. CUSHMAN,
Judge.

(Filed October 21, 1916.) [100]

*In the District Court of the United States for
the Western District of Washington, Southern
Division.*

IN EQUITY—No. 67.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON - HOOVER
LOGGING COMPANY, HUMPTULIPS
LOGGING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R.
CLARK, Trustees, SLADE-WELLS LOG-
GING COMPANY,

Defendants.

**Petition for Leave to Amend the Original Petition
Herein and for a Rehearing Thereof.**

To the Honorable Judges of the Above-named Court:

Come now the First National Bank of San Francisco, the Coats-Fordney Logging Company and the Saginaw Timber Company, and respectfully petition the Court for leave to amend the original petition herein, by adding thereto the following:

That the *ex parte* order heretofore made in this cause appointing Geo. L. McPherson as receiver of the mortgaged premises described in the complaint of the plaintiff on file in this cause, be vacated on the following grounds:

1st. That the said mortgage security is more than adequate to satisfy the indebtedness to plaintiffs secured thereby.

2d. That it does not appear that the property covered by said mortgage is in danger of being lost, removed or materially injured, so as to render said security inadequate for the discharge of the indebtedness to the said plaintiff.

And your petitioners further pray the Court that a rehearing of said Petition as herein amended be granted to your petitioners, with leave to file further affidavits herein, and that [101] the time and place

be fixed for the hearing thereof.

THE FIRST NATIONAL BANK OF SAN
FRANCISCO.

By HUGHES, McMICKEN, DOVELL &
RAMSEY,

Its Solicitors.

COATS-FORDNEY LOGGING COMPANY.
SAGINAW TIMBER COMPANY.

By JOHN C. HOGAN,

Their Solicitors.

(Filed October 16, 1916.) [102]

*In the District Court of the United States for
the Western District of Washington, Southern
Division.*

No. 67—E.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,

Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON-HOOVER
LOGGING COMPANY, HUMPTULIPS
LOGGING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R.
CLARK, Trustees, SLADE-WELLS LOG-
GING COMPANY,

Defendants.

**Answer of the American National Bank of San
Francisco et al.**

Come now the American National Bank of San Francisco, a corporation, Welch & Company, a corporation, United States National Bank of Portland, Oregon, a corporation, Slade-Wells Logging Company, a corporation, and Humptulips Logging Company, a corporation, and respectively showing to the Court as follows:

I.

That answering defendants are creditors of S. E. Slade Lumber Company, a corporation, and beneficiaries secured under that certain mortgage or deed of trust made on the 2d day of June, 1915, between S. E. Slade Lumber Company, a corporation, as mortgagor, and First Federal Trust Company of San Francisco and Milton R. Clark, as trustees, as mortgagees; that said answering defendants represent a majority both in number and in amount of claims secured under said mortgage or deed of trust above described.

II.

That on the 30th day of April, 1915, a certain [103] agreement, otherwise known as creditors' agreement, was entered into by and between answering defendants and the First National Bank of San Francisco, a corporation, Coats-Fordney Logging Company, a corporation, Saginaw Timber Company, a corporation, and Sudden Estate Company, a corporation, which said agreement was entered into for the purpose of protecting and securing the claims

of the unsecured creditors of S. E. Slade Lumber Company, and with the purpose of committing the signers of said agreement to the advancement, for a period of one year and optionally for two years, of sufficient moneys to pay the interest on the bonds secured under and by virtue of the first mortgage covering the lands of the S. E. Slade Lumber Company, as well as the interest on the second mortgage, the taxes on the property of the Lumber Company and the insurance thereon, upon condition that Detroit Trust Company and Alexander McPherson, as trustees, the mortgagees under the first mortgage, would waive the collection for the period of one year after the signing of said agreement, and provisionally for a period of two years, of the principal of the maturing bonds under said first mortgage. That under said creditors' agreement it was contemplated that a third mortgage should be made by S. E. Slade Lumber Company to First Federal Trust Company, a corporation, as trustee, covering the properties of the Lumber Company described in the first and second mortgages, including other property, which mortgage was duly given and is the same mortgage or deed of trust hereinabove referred to. That under the terms of said creditors agreement, the creditors parties thereto duly advanced the moneys therein contemplated to be advanced, and during said period of one year earnest attempts were made by said creditors, represented by a committee, and the said S. E. Slade Lumber Company to sell the timber holdings of the Lumber Company for a price sufficient to pay the claims of the first, second and

third mortgagees, but without [104] success. That said creditors agreement constituted the working agreement under which the beneficiaries secured under the third mortgage were to be governed, and under said creditors' agreement the creditors parties thereto agreed to be represented by a committee consisting of George A. Kennedy, representing the First National Bank of San Francisco, P. E. Bowles, representing the American National Bank of San Francisco, and A. P. Welch, representing Welch & Company, and it was provided in said agreement that said committee, representing all the creditors, should have power only to act unanimously and not by a majority. That after the expiration of one year from the signing of said creditors' agreement, certain of the creditors refused to advance further moneys in fulfillment of the purposes of the creditors' agreement, and thereupon it was sought to enter into a logging contract for the timber holdings of the lumber company, by and with the consent of Detroit Trust Company and S. E. Slade Lumber Company and the unanimous consent of the creditors' committee above mentioned. That the creditors' committee could not agree upon the policy of logging said timber, P. E. Bowles and A. P. Welch, a majority of said creditors' committee, being in favor of such policy, and George A. Kennedy, the remaining member of the committee, being opposed thereto. That under said creditors' agreement said committee of creditors could in their discretion cause suit to be brought or other appropriate proceedings commenced to foreclose the mortgage to be given by

the Lumber Company, and which is the same mortgage or deed of trust made on the 2d day of June, A. D. 1915, above referred to, and under the terms of said mortgage or deed of trust it is provided that the parties of the second part (being the trustees) shall be under no obligation or duty to perform any act thereunder, unless requested in writing so to do by duly appointed representatives of The First National Bank of San Francisco, The American National Bank of San Francisco and Welch & Company. It is further provided [105] in said mortgage or deed of trust that the trustees should have the exclusive right of action thereunder and that no beneficiary under said mortgage should be entitled to commence any action unless the trustees should refuse or fail so to do when properly thereunto requested. True and correct copies of said creditors' agreement and of said mortgage or deed of trust have heretofore been offered in evidence in this court and cause and reference thereto is hereby made. That the trustees under said mortgage or deed of trust heretofore and to wit, on the 14th day of June, 1916, were duly notified by P. E. Bowles and A. P. Welch, a majority of the members of the creditors' committee created under the agreement of April 30, 1915, not to take any action whatsoever at the time of the date of such notification or at any time in the future, under the third mortgage or otherwise, until the unanimous consent of the creditors' committee could be obtained, and answering defendants allege that said unanimous consent has not been obtained, and said trustees under the mortgage or deed of trust have never

been requested in writing by said committee, acting in harmony, to do or perform any act or take any steps whatsoever under the third mortgage or otherwise, and said trustees have never been requested in writing by said creditors' committee to take any action or proceeding in the pending cause. That by reason of the terms of the creditors agreement and the mortgage or deed of trust of June 2, 1915, and by reason of the failure of the creditors' committee to demand of the said trustees to take any action or proceeding in the pending cause, answering defendants claim and insist that First National Bank of San Francisco, Coats-Fordney Logging Company and Saginaw Timber Company, or either of them, have no right to appear and contest the order of the Court made herein, appointing a receiver and authorizing the making of a logging contract and approving of such logging contract, and answering defendants except to so much of order of the Court made and entered on the [106] — day of December, 1916, authorizing and permitting each and every one of the beneficiaries under said mortgage and deed of trust to intervene herein and to become parties defendant herein.

III.

Answering defendants further respectively submit that if the beneficiaries under the third mortgage are proper parties defendant herein, either under the order of the Court heretofore entered or otherwise, and have a right to appear herein, either jointly or severally, either to contest the action of the Court in appointing a receiver and authorizing him to enter into a logging contract and approving the making of

a logging contract, or of appearing and approving the action of the Court in such particulars, then answering defendants respectively pray that the order of the Court made on the 4th day of August, 1916, appointing George L. McPherson as receiver of all the property and assets of S. E. Slade Lumber Company, a corporation, with power to operate the properties of the S. E. Slade Lumber Company, and the order of the Court made on the 4th day of August, 1916, authorizing the receiver to make and enter into a certain logging contract with Humptulips Logging Company, a corporation, and approving said logging contract, be continued in force, upon the following grounds and reasons, to wit:

A. Because of a forced sale of the lands of the S. E. Slade Lumber Company would result in a sacrifice of much of its real value, and said property if forced to sale at the present time, either under the bill of the plaintiffs in this cause, or otherwise, would not bring sufficient moneys to pay the debts of the S. E. Slade Lumber Company secured under the first, second and third mortgages, and leave no equity for the said mortgagor.

B. That the properties of the S. E. Slade Lumber Company are more than adequate to the payment of the debts of the said Lumber [107] Company secured under said first, second and third mortgages, with an equity remaining in the mortgagor, provided full value can be secured for said properties and provided said properties are turned from dead into liquid assets; that only by immediate cutting and marketing of the timber can the full value of said timber holdings be secured for the creditors of the

Lumber Company, and only by and through the means of a logging operation can the creditors of the said Lumber Company and more particularly the beneficiaries secured under the third mortgage, obtain the payment of their claims, and by reason thereof it will be for the best interests of all the creditors of the said Lumber Company and more particularly for the interest of all the creditors secured under the third mortgage, that the logging contract entered into by and between the receiver and Humptulips Logging Company be kept in force and carried out.

C. Because there were at the time of the making of the logging contract approximately twelve (12) million feet of fir logs cut and bucked on the lands of the Lumber Company, which logs were in constant danger of being destroyed by fire, and also constituted an extraordinary fire risk with reference to the standing timber, and which logs were of great value and were daily deteriorating in value unless the same were brought to market and sold.

D. Because large sums of money had sometime prior to the making of the logging contract by the receiver, been spent in opening up the property of the Lumber Company for the more advantageous logging of the same, an numerous skid roads had been constructed on the property, and there was on the ground ready for use a large logging equipment of great value and belonging to the Humptulips Logging Company, and which skid roads and logging equipment under the logging contract entered into were immediately available for use in the logging operations; that in order to obtain the advantage of

the skid roads which had been constructed on the property, and in order to [108] obtain the value of the moneys which had theretofore been spent in opening up the lands of the Lumber Company for the logging of the same, it was necessary to take immediate steps to conduct logging operations upon said lands, and unless the logging operations begun by the receiver be continued, the property of the S. E. Slade Lumber Company will so deteriorate in value and the carrying charges of the indebtedness of the Lumber Company will grow so great that the property will be insufficient to pay the debts.

E. Because the S. E. Slade Lumber Company is insolvent and has no money wherewith to pay taxes or insurance and cannot meet any of its mature and maturing obligations, or in *any safeguard* and protect its properties from forest or other fires or from waste and deterioration.

F. Because in the opinion of answering defendants it will not be necessary to pay all the debts of S. E. Slade Lumber Company from the revenues derived from the logging operations now being conducted. That within two or three years from the date of the making of said logging contract, providing the same is continued in force and carried out according to its terms, the indebtedness of the defendant S. E. Slade Lumber Company will be so materially reduced and the condition of the Lumber Company so largely improved, that it will be possible to refinance the obligations of the Lumber Company and provide for the liquidation of all its indebtedness. Because in the opinion of answering defendants, within two or three years from the date of the

making said logging contract, providing the same is continued and carried out according to its terms, the logging of said timber will demonstrate the value of the timber holdings of the Lumber Company to such an extent as to make possible the sale of the said [109] properties at a price more than adequate for the payment of the indebtedness of the said Lumber Company.

IV.

In support of its contentions that the orders of the Court appointing a receiver with power to enter into a logging contract and authorizing the particular contract entered into by the receiver, answering defendants adopt and refer to the testimony heretofore introduced in this cause by the plaintiff, the receiver and by Humptulips Logging Company.

WHEREFORE, your answering defendants pray for the continuance of the receivership and the continuance of the logging contract entered into by the receiver, under the authority and approval of the Court, and for such other and further relief as in equity and good conscience they may be entitled to.

THE AMERICAN NATIONAL BANK OF
SAN FRANCISCO.

WELCH & COMPANY.

UNITED STATES NATIONAL BANK OF
PORTLAND, OREGON.

SLADE-WELLS LOGGING COMPANY.

HUMPTULIPS LOGGING COMPANY.

By THEO. B. BRUENER,

Its Solicitor.

P. O. Address: Aberdeen, Wash.

(Filed December 29, 1916.) [110]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 67.—IN EQUITY.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY et al.,
Defendants.

THE FIRST NATIONAL BANK OF SAN FRAN-
CISCO, COATS-FORDNEY LOGGING
COMPANY and SAGINAW TIMBER
COMPANY,

Intervenors.

Decretal Order.

This cause came on to be heard on this 18th day of December, A. D. 1916, at this term, upon the petition and amended petition of the First National Bank of San Francisco, Coats-Fordney Logging Company and Saginaw Timber Company, creditors secured under a certain junior mortgage executed by the defendant S. E. Slade Lumber Company to the defendants First Federal Trust Company and Milton R. Clark, as Trustees, which petitioning creditors have heretofore, by order of this Court, been permitted to intervene herein and been made parties to defendant, with authority to act in their own behalf, because of the refusal of the said trustees, First Federal Trust Company and Milton R. Clark, to appear and

act for them herein, and the said cause was duly argued by counsel; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED and DECREED as follows, namely: [111]

First. That the *ex parte* order made and entered in the above-entitled cause on the 4th day of August, 1916, appointing George L. McPherson as receiver of all the mortgaged premises and property described in the complaint of the plaintiffs herein, be and it is hereby approved and made the final order of this Court appointing said receiver.

Second. That the *ex parte* order made and entered in this cause on the 4th day of August, 1916, authorizing and directing the said George L. McPherson, as such receiver, to enter into a contract with the Humptulips Logging Company for the logging of the timber upon the lands covered and described in the mortgages given by the defendant S. E. Slade Lumber Company to the said plaintiffs herein and to said First Federal Trust Company and Milton R. Clark, Trustees under said junior mortgage, a copy of which said contract is set forth in the petition upon which said order is based, be and it is hereby approved and made the final order of this Court, and that the contract made by the said receiver in pursuance thereof be and it is hereby ratified and approved, and said petition and amended petition of intervening defendants is hereby dismissed.

To each of which orders the said petitioning creditors duly excepted and their exception is hereby allowed.

Done in open court this 18th day of December,
1916.

EDWARD E. CUSHMAN,
Judge.

(Filed December 18, 1916.) [112]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 67—IN EQUITY.

DETROIT TRUST COMPANY and ALEXAN-
DER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY et al.,
Defendants,

vs.

THE FIRST NATIONAL BANK OF SAN FRAN-
CISCO, COATS-FORDNEY LOGGING
COMPANY and SAGINAW TIMBER
COMPANY,

Intervenors.

Order Allowing Appeal.

JOURNAL ENTRY.

Now in open court on this 18th day of December,
A. D. 1916, upon the making, signing and entry herein
of the decretal order of this Court this day entered in
said cause, denying the petition of The First National
Bank of San Francisco, Coats-Fordney Logging
Company and Saginaw Timber Company, interven-
ing defendants herein, and ratifying and approv-

ing the orders authorizing the receiver to enter into a contract for logging the mortgaged premises and approving said contract, the said intervening defendants, The First National Bank of San Francisco, Coats-Forney Logging Company and Saginaw Timber Company, give notice of appeal from said decretal order, and the whole and every part thereof, to the United States Circuit Court of Appeals for the Ninth Judicial District, and at the same time present and file herein their assignment of errors, and ask the Court [113] to allow their said appeal and fix the penalty of the cost bond required to be given therein.

Now, therefore, it is by the Court ORDERED that said appeal be and hereby is allowed, and the bond for costs therein be and it is hereby fixed at the sum of \$200.

EDWARD E. CUSHMAN,
U. S. District Judge.

(Filed December 18, 1916.) [114]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 67—IN EQUITY.

DETROIT TRUST COMPANY and ALEX-
ANDER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, et al.,
Defendants,

THE FIRST NATIONAL BANK OF SAN FRANCISCO, COATS-FORDNEY LOGGING COMPANY and SAGINAW TIMBER COMPANY,

Intervenors.

Assignment of Errors.

Now on this 18th day of December, A. D. 1916, come the above-named intervenors, the First National Bank of San Francisco, Coats-Fordney Logging Company and Saginaw Timber Company, and say:

That the decretal order entered in the above-entitled cause on this 18th day of December, 1916, wherein the Court approved and made final the *ex parte* order heretofore entered in said cause on the 4th day of August, 1916, appointing George L. McPherson as receiver of the mortgaged premises described in plaintiffs' complaint, and further approved and made final the *ex parte* order of said Court made on the 4th day of August, 1916, authorizing and directing said George L. McPherson, as such receiver, to enter into a contract with the Humptulips Logging Company for the logging of the timber upon said mortgaged premises, a copy of which contract is set forth in the petition of the receiver upon which said order is [115] based, and denied the petition of these intervening defendants to vacate and set aside the contract made by said receiver in pursuance thereof, is erroneous and unjust to these intervening defendants:

First. Because the said George L. McPherson is not a receiver of an insolvent corporation and of all its assets and property, but is a receiver only

of the mortgaged premises to care for and conserve the same and the rents and profits thereof, pending the foreclosure of the plaintiffs' mortgage, and is without power or authority to carry on or conduct the business of the mortgagor or any part thereof.

Second. Because the Court is without authority or power to authorize its said receiver to enter into a contract by which the carrying on of any part of the business of the mortgagor is delegated to a third party.

Third. Because the Court is without power to authorize the said receiver of the mortgaged premises to cut and remove the standing timber from the mortgaged premises or to cause the same to be sold and disposed of at private sale.

Fourth. Because the Court exceeded and abused its discretionary powers in authorizing and approving the making of said contract by its said receiver.

Fifth. Because the execution and carrying out of said contract would require a period of eight or ten years and would prevent the final hearing and determination of the cause of action instituted by plaintiffs and pending herein and the entry and [116] execution of a final decree therein during said time.

Sixth. Because the carrying out of said receiver's contract divests this proceeding of the ordinary judicial processes of the Court and authorizes the disposition by the receiver, at private sale, of the principal part of the property in the custody of the Court.

Seventh. Because it provides for cutting and sale of the standing timber constituting the chief

value of the land and thereby deprives these intervening defendants of their equity of redemption in said mortgaged premises which is secured to them by the execution and delivery of the mortgage of said S. E. Slade Lumber Company to the First Federal Trust Company and Milton R. Clark, mentioned in the complaint of plaintiffs in the above-entitled cause.

Eighth. Because it impairs and diminishes the value of their equity of redemption in said mortgaged premises which is secured to them by the execution and delivery of the mortgage of said S. E. Slade Lumber Company to the First Federal Trust Company and Milton R. Clark, mentioned in the complaint of plaintiffs in the above-entitled cause.

JOHN C. HOGAN and

HUGHES, McMICKEN, DOVELL &
RAMSEY,

Solicitors for Said Intervenor.

(Filed December 18, 1916.) [117]

*In the District Court of the United States for the
Western District of Washington, Southern Division.*

No. 67—IN EQUITY.

DETROIT TRUST COMPANY and ALEX-
ANDER McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, et al.,
Defendants,

THE FIRST NATIONAL BANK OF SAN FRANCISCO, COATS-FORDNEY LOGGING COMPANY and SAGINAW TIMBER COMPANY,

Intervenors.

Cost Bond.

KNOW ALL MEN BY THESE PRESENTS: That we, The First National Bank of San Francisco, a corporation, Coats-Fordney Logging Company, a corporation, and Saginaw Timber Company, a corporation, the above named intervenors, as principals, and United States Fidelity and Guaranty Company, a body corporate, duly incorporated under the laws of the State of Maryland and authorized to transact the business of surety in the State of Washington, as surety, executing this bond in behalf of said principals and each of them, are, jointly and severally, held and firmly bound unto Detroit Trust Company and Alexander McPherson, as Trustees, plaintiffs above-named, George L. McPherson, receiver herein, S. E. Slade Lumber Company, a corporation, William T. Cameron, Cameron-Hoover [118] Logging Company, a corporation, Humptulips Logging Company, a corporation, First Federal Trust Company and Milton R. Clark, Trustees, and Slade-Wells Logging Company, a corporation, defendants above named, their heirs, executors, administrators, successors and assigns in the just and full sum of two hundred (200) dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our

and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 18th day of December, A. D., 1916.

THE CONDITION OF THIS OBLIGATION
IS SUCH THAT

WHEREAS, in the above-entitled action, a decretal order was entered on the 18th day of December, A. D. 1916, denying the petition of the First National Bank of San Francisco, Coats-Fordney Logging Company and Saginaw Company, intervening defendants herein, and ratifying and approving the orders authorizing the receiver to enter into a contract for logging the mortgaged premises and approving said contract, and,

WHEREAS, the said intervening defendants, The First National Bank of San Francisco, Coats-Fordney Logging Company and Saginaw Timber Company have appealed from said decretal order and the whole and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit,

NOW, THEREOF, if the said intervening defendants shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they shall fail to make good their plea, then the above obligation to be void, other-

wise to remain in full force and effect. [119]

THE FIRST NATIONAL BANK OF SAN
FRANCISCO.

By HUGHES, McMICKEN, DOVELL &
RAMSEY,

Its Solicitors.

COATS-FORDNEY LOGGING COMPANY.
SAGINAW TIMBER COMPANY.

By JOHN C. HOGAN,

Their Solicitor.

UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY,

[Corporate Seal] By GROVER C. WINN,

Its Attorney in Fact.

The above and foregoing bond and the sufficiency
of the surety thereon approved by me this 18th day
of December, A. D. 1916.

EDWARD E. CUSHMAN,

Judge of said Court.

(Filed December 18, 1916.) [120]

*In the District Court of the United States for
the Western District of Washington, Southern
Division.*

No. 67—IN EQUITY.

DETROIT TRUST COMPANY and ALEXANDER
McPHERSON, as Trustees,

Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY et al.,
Defendants.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, COATS - FORDNEY LOGGING COMPANY, and SAGINAW TIMBER COMPANY,

Intervenors.

Stipulation Re Statement of Case.

IT IS HEREBY STIPULATED AND AGREED by and between the appellants and appellees herein, by their respective attorneys, as follows:

(1) That the statement, including abstract of the evidence, copies of documents and exhibits, attached to this stipulation and filed herewith, shall be deemed and considered as an agreed statement of the case for the purposes of appeal, and that this agreed statement of the case, together with the transcript of the record as covered by stipulation heretofore signed, shall be transmitted to the clerk of the Circuit Court of Appeals, as the record on appeal.

(2) It shall not be necessary for the clerk to copy the statement of the case attached to this stipulation, but the [121] original thereof may be transmitted by the clerk.

Dated this 1st day of January, 1917.

HUGHES, McMICKEN, DOVELL & RAMSEY,

JOHN C. HOGAN,

Attorneys for Appellants.

WALLACE McCAMANT,

BRIDGES & BRUENER,

Attorneys for Appellees.

I, E. E. Cushman, Judge of the above-named court,

before whom the proceedings in the above-entitled action were had, do hereby approve of the foregoing stipulation and the agreed statement of the case attached thereto, and I hereby certify to the case and the correctness thereof, and I hereby approve of the same.

Dated Jany. 2d, 1917.

EDWARD E. CUSHMAN,
Judge.

Filed in the U. S. District Court, Western District of Washington, Southern Division. Jan. 2, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [122]

Agreed Statement of the Case.

No. 67—IN EQUITY.

DETROIT TRUST CO. et al.

vs.

S. E. SLADE LBR. CO. et al.

Statement of Evidence.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 2, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [123]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 67—IN EQUITY.

DETROIT TRUST COMPANY and ALEXANDER
McPHERSON, as Trustees,
Plaintiffs,

vs.

S. E. SLADE LUMBER CO. et al.,
Defendants.

THE FIRST NATIONAL BANK OF SAN FRAN-
CISCO, COATS - FORDNEY LOGGING
COMPANY and SAGINAW TIMBER
COMPANY,

Intervenors.

Statement of Evidence.

Comes now The First National Bank of San Francisco, Coats-Fordney Logging Company and Saginaw Timber Company, intervening defendants and appellants herein and make and lodge in the office of the clerk of this court the following statement of the evidence offered and introduced upon the hearing of said cause, to wit: [124]

1.

A certain mortgage executed by the defendant S. E. Slade Lumber Company to the Federal Trust Company and Milton R. Clark, trustees, duly executed on the 2d day of June, 1915, and recorded in the manner as provided by law, a true copy of which is hereto attached and made a part hereof.

2.

A certain creditors' agreement executed on the 30th day of April, 1915, between certain creditors secured under said mortgage last above referred to, a true copy of which creditors' agreement is hereto attached and made a part hereof.

3.

The Lacey cruise, referred to in the mortgage sought to be foreclosed herein, a copy of which mortgage is attached to the bill of complaint of the Detroit Trust Company and Alexander McPherson in this cause, shows the amount of merchantable timber upon said mortgaged premises at the date thereof to have been 652 million feet, and it is shown by the evidence that subsequent thereto and prior to the first day of August, 1914, there had been logged and sold 100 million feet of timber, and that no logging had been done thereafter prior to the appointment of the receiver herein.

4.

At the time of the appointment of the receiver herein, P. E. Bowles and A. P. Welsh, two of the three trustees named in the creditors' agreement herein above mentioned, by telegram to the clerk of the court, requested the appointment of a receiver as prayed for in said petition. [125]

5.

The intervening defendants offered and read in evidence the following affidavits:

Affidavit of Herman Walker.

The affidavit of HERMAN WALKER, which, so far as material, was as follows:

I am a member of the logging firm of Walker Bros., of Hoquiam, Washington, engaged in logging operations on the Humptulips River. We have an annual operation of 10 or 15 million feet of logs. I am acquainted with the timber tract known as the S. E. Slade Lumber Company timber, and in my opinion there is practically no fire risk in connection with this timber. It is situated in the fog belt close to the coast. I would regard the fire risk as one-half of one per cent. The Humptulips Logging Company has never done any logging on the Humptulips River or elsewhere to my knowledge.

Affidavit of A. J. Morley.

The affidavit of A. J. MORLEY, which, so far as material, was as follows:

I am manager of the Saginaw Timber Company, which is a logging corporation and I have been engaged in the logging business in Grays Harbor County and am familiar with logging operations there *in* for the past ten years. I am acquainted with the Slade Lumber Company tract of timber in controversy; and during the time the Warren Company was logging it in 1912-'14, I visited their camps and was over the property to a considerable extent. The timber comprising the S. E. Slade Lumber Company tract is green, standing timber situated not far from the ocean, and in a section where rains and fogs are abundant and regular except in the latter months of summer and early fall, and the danger in this region from fire [126] to green, standing timber is extremely slight. When fire

gets into green timber of the character of this tract it does practically no damage.

I am familiar with the terms of the contract entered into by the receiver with the Humptulips Logging Company in this case. I have gone over this contract and studied it over carefully. If I were a timber owner I would never make such a contract with a logger. I regard this contract as highly detrimental to the interests of the third mortgagees and general creditors of the Slade Lumber Company situated as the Saginaw Timber Company and the Coats-Fordney Logging Company. In my experience in logging operations I have never known a contract of similar terms to be made.

The feature of the contract allowing the Humptulips Logging Company the cost of logging plus \$1 per M feet profits, is unusual, extraordinary, and unreasonable, and a profit of \$1 under such circumstances would be grossly excessive in my belief.

The contract is loose as to what shall constitute logging expenses, and it would seem to be possible under the contract for the logger to build up an extensive and expensive logging plant under the head of logging expenses, to say nothing of the opportunities afforded for the inclusion of improper charges. However bad the judgment of the logger may be in incurring an item of expense of any magnitude, it becomes immaterial to the logger, since the logs must bear the burden. This feature of the contract is rendered still more objectionable by the fact that, the logger, through its boom and driving companies, is receiving \$1.25 per M feet for driving

and booming the logs, and owing to a total lack of [127] proper provisions in the contract, many items of expense (example, overhead) which should be borne wholly or in part by driving and booming, can be thrown wholly into logging expense and the material tendency will be that way.

The interest of the creditors is not adequately protected by a proper provision requiring the logger to remove all timber capable of making saw logs. The expression "all merchantable timber" is a most elastic and uncertain expression.

The lack of any requirement in the contract that the logs shall be graded when scaled and sold, is a vicious feature, for the contract would permit of the sale of logs on "camp run" under scaling conditions resulting in a reduction of the number of M feet, at the expense of a higher price per M feet, thereby giving the operation a fictitious appearance of advantage to the creditors, when in reality it might be otherwise.

The aspect of the contract permitting the logger to throw up the contract on 60 days notice is bad, and no timber owner should make such a contract with a logger. This would enable the logger to cut such of the timber as may be deemed advantageous to log and then throw up the contract, leaving the most expensive and difficult part of the work to be done.

In considering this contract the facts must be taken into account, that if the contract was carried out it will cover a long period of years, and the logging company pays none of the interest charges,

taxes or other carrying charges of the timber, all of which are borne by the creditors, and which if taken into account would reduce the value received by the creditors for stumpage far below the apparent \$3 [128] per thousand mentioned in the contract. The contract, to a great extent, has the result that the logging company may speculate on the future with this large tract of timber tied up. I would consider a sale of the stumpage at the present time for \$2.25 per thousand, payable in cash or interest-bearing securities a better deal for the creditors than this contract, even if the Humptulips Logging Company should live up to it.

Affidavit of Hubert Schafer.

The affidavit of HUBERT SCHAFER, which, so far as material, was as follows:

I am a practical logger engaged in the logging business in Grays Harbor County and I am a member of the firm of Schafer Bros. Logging Co. of said county; that our firm is logging timber at the rate of 30 million a year, principally fir. I have charge of the sale of logs of our firm to the mills on Grays Harbor at the present time and for about six months last past our firm has had a sales contract with a mill company in Grays Harbor for all our fir logs on what is known as "camp run" or "straight," as it is sometimes called, that is the logs are not graded at all. Under our contract the purchaser was required to take all our fir logs in this way up to July 1, 1916, at \$11 per thousand, and since July 1, 1916, we are being paid \$10,—and we

did sell nearly all our fir logs that way,—for our fir logs under this contract, on a basis of “camp run” or “straight.” Our fir timber from which these logs are cut is good average fir timber. There are three methods in use on Grays Harbor in marketing logs,—one is to sell them “camp run” or “straight” [129] as we are doing with our fir; a second method is grading them into No. 1, No. 2 and No. 3; and the third is to grade them into Grades Nos. 1 and 2. A practice I have known to prevail to some extent on Grays Harbor in the sale of logs also has been to cut the rough and poor logs, which would naturally make No. 3 logs, into higher grade logs by reducing the number of M feet, so that in this way the seller would receive the same amount of money for fewer number of M feet of logs.

The affidavit of G. S. HARRIS, which was in substance the same as the affidavit of Walker.

6.

The following documents were offered and received in evidence.

A written contract between S. E. Slade Lumber Company and Warren Company, executed July 31, 1912, attached to the affidavit of A. J. Morley as Exhibit “A,” a true copy of which is hereto attached and made a part hereof.

A notice of forfeiture by the S. E. Slade Lumber Company to the Warren Company for its failure to comply with the terms of Warren contract, a copy of which is hereto attached and marked Exhibit “B” and made a part hereof.

An assignment of a certain written option dated June 19, 1914, of the Warren Company to the S. E. Slade Lumber Company, assignment and transferring the rights of S. E. Slade Lumber Company therein to H. B. Brown, identified as Exhibit "C," a true copy of which is hereto attached and made a part hereof. [130]

The record of the board of trustees of the Humptulips Logging Company, a true copy of which was by agreement of parties and consent of the court substituted for the original and is hereto attached and made a part hereof and marked as Exhibit "D."

A written transfer, dated, July 27, 1914, by the Warren Company to the Humptulips Logging Company, made in pursuance of the exercise of the option above described, a copy of which is hereto attached and made a part hereof and marked Exhibit "E."

A copy of the release and satisfaction by the S. E. Slade Lumber Company to the Warren Company of all obligations arising under the above-described contract of July 31, 1912, which, omitting signatures, was admitted by the appellees to be in all respects a true copy of the original, a copy of the same being hereby attached and made a part of this statement (marked Petitioners' Exhibit "D.")

Affidavit of A. J. Morley.

7.

The intervening defendants also offered and read in evidence the second affidavit of A. J. MORLEY, describing the documents above mentioned, except

the recording of the proceedings of the board of trustees of the Humptulips Logging Company, and containing the following: [131]

The Warren Company commenced logging operations under its contract and continued to log thereunder and make their monthly payments up to the month of April, 1914, and during that interval cut and put into the water approximately 70 million feet of timber, about 50 million of which was marketed and about 20 million of which remains in and on the Humptulips river.

The Warren Company failed to make the monthly payment of \$12,500 due April, 1914, under its contract with the S. E. Slade Lumber Company, and on or about the 26th of May, 1914 the latter company under the provisions of paragraph 9 of its contract with the Warren Company served notice of forfeiture, (a copy of which is attached to this statement).

Thereafter on June 19, 1914, the Warren Company gave to the S. E. Slade Lumber Company a written option (a copy of which is attached to this statement).

Thereafter the S. E. Slade Lumber Company, without any consideration, as affiant is informed and believes, assigned the said option to H. P. Brown, then vice-president of the S. E. Slade Lumber Company, who between the dates of June 19, 1914 and July 27, 1914, interviewed the various general creditors of Warren Company and obtained from them, or a majority of them, an understanding to the effect that such creditors except about \$20,000 of labor

liens, would wait for their pay until the same could be realized out of the sale of the 20 million feet of logs in the Humptulips river above referred to, and thereafter proceeded to incorporate the Humptulips Logging Company. That the incorporators of the Humptulips Logging Company were H. P. Brown, vice-president of the Slade Lumber Company, W. B. Mack, manager of the [132] S. E. Slade Lumber Co., and one C. A. Pitchford, an employee of the S. E. Slade Lumber Co., and that the articles of incorporation of said company were filed July 18, 1914, and its authorized capital was \$100,000.

That the value of the S. E. Slade Lumber Company tract of timber in controversy is materially and seriously influenced and affected by the question of whether or not the parties controlling the timber control also the driving and booming, and the various easements and rights of way, including dams and logging roads conveyed by the Warren Company to the Humptulips Logging Company.

That the mill of the S. E. Slade Lumber Company has been idle for about two years last past. [133]

**Exhibit "A-1"—Agreement, April 30, 1915, Between
The First National Bank of San Francisco, et
al., and Sudden Estate Company, a Corporation.**

THIS AGREEMENT, Made this 30th day of April, 1915, by and between The First National Bank of San Francisco, and American National Bank of San Francisco, corporations organized under the national banking laws of the United States of America, Welch & Company, a corporation organized and existing under and by virtue of the laws of the State of California, Coats-Fordney Logging

Company, a corporation organized under the laws of the State of Michigan, Saginaw Timber Company, a corporation organized under the laws of the State of Michigan, Slade-Wells Logging Company, a corporation organized under the laws of the State of California, United States National Bank of Portland, a corporation organized under the national banking laws of the United States of America, Humptulips Logging Company, a corporation organized under the laws of the State of Washington, and Sudden Estate Company, a corporation organized under the laws of the State of California.

WITNESSETH: That the parties hereto are creditors of the S. E. Slade Lumber Company, hereinafter called the Lumber Company, and said Lumber Company represents that it is indebted to the parties hereto in the sum of \$531,272.16, and that it is indebted to other creditors in smaller amounts aggregating \$121,963.27; and that said Lumber Company has at the present time an outstanding bond issue, the principal sum of which is \$550,000, secured by first mortgage upon certain of its property, running to the Detroit Trust Company, Detroit, Michigan, and Alexander McPherson, as trustees, and is also indebted in the further sum of \$69,000, secured by a second mortgage upon its property running to the Detroit Trust Company of Detroit, Michigan.

And said Lumber Company represents that it is without available means with which to meet the payments and obligations required to be made, kept and performed by the terms and conditions of the said two mortgages last referred to, and the said [134] Lumber Company represents that it will require the

sum of \$75,000 during the ensuing twelve months to meet the requirements in said mortgages for the payment of taxes, insurance and interest on bonds, exclusive of the retiring of \$50,000 of the principal sum of the bond issue secured by said first mortgage, and also to meet certain expenses incident to taking care of the property with a view to keeping the insurance rates at the lowest practicable figure.

NOW, THEREFORE The parties hereto agree that they will severally advance during the next twelve months upon the conditions hereinafter set forth, the amounts set opposite their respective names, to be loaned to the S. E. Slade Lumber Company for the payment of taxes, insurance and interest on bonds, and the expenses of taking care of the property of the said company for the purpose of keeping the insurance premiums at the lowest practicable figure, viz.:

Names	Amounts
The First National Bank of San Francisco	\$28,650.00
American National Bank of San Francisco	13,425.00
Welch & Company	14,100.00
Coats-Fordney Logging Company	5,025.00
Saginaw Timber Company	1,200.00
Slade-Wells Logging Company	4,575.00
United States National Bank of Portland	3,525.00
Humptulips Logging Company.....	975.00
Sudden Estate Company	3,525.00
	<hr/>
	\$75,000.00

The conditions upon which said advances are to be made are as follows:

First. Said moneys shall be advanced in the amounts and at the times to be fixed by George A. Kennedy, representing The First National Bank of San Francisco, P. E. Bowles, representing The American National Bank of San Francisco, and A. P. Welch, representing Welch & Company.

Second. Such moneys shall be paid by the respective parties hereto to the first Federal Trust Company of San Francisco, to be disbursed by such company as hereinafter provided. [135]

Third. The Lumber Company shall execute its promissory note, payable to each of the respective parties hereto for the amount advanced by it, and shall deliver said note to such Trust Company to be by it delivered to the payee upon the payment by the payee of the amount of such note to such Trust Company. Said notes shall be payable one day after date, and shall bear interest at the rate of six (6) per cent per annum, and shall be secured by the mortgage hereinafter referred to, and payment of the same shall be enforced at the same time and in the same manner as payment of the other indebtedness of said Lumber Company held by the parties hereto.

Fourth. That said Lumber Company, by and with the consent of the Detroit Trust Company of Detroit, Michigan, execute and deliver to the First Federal Trust Company of San Francisco, a mortgage covering all of its property, real and personal, to secure the indebtedness of the several parties

hereto, and also the indebtedness due to the other creditors hereinbefore referred to and also to secure such sums as may be advanced by any of the respective parties hereto under the terms of this agreement, such mortgage to be in form satisfactory to said George A. Kennedy and P. E. Bowles and A. P. Welch, and subject only to the mortgage to the Detroit Trust Company and Alexander McPherson and said second mortgage to the Detroit Trust Company hereinbefore referred to.

Fifth. That there be delivered to such Trust Company eight thousand (8000) shares of the capital stock of said Lumber Company as further security for the payment of the indebtedness to be secured by said mortgage, such stock to be placed in the name of such person or corporation, as pledgee or trustee, as may be designated by said George A. Kennedy, P. E. Bowles and A. P. Welch, and, at the discretion of said last-named parties, to be voted by such trustee or pledgee.

Sixth. That arrangements satisfactory to said George A. Kennedy, P. E. Bowles and A. P. Welch be made by the said [136] Lumber Company with the Detroit Trust Company to have the bonds now due or falling due during the next twelve months carried without commencing proceedings to foreclose the mortgage securing the same, said Detroit Trust Company to agree that no proceedings for foreclosure of either the first mortgage or second mortgage held by it shall be begun during that period. Said Detroit Trust Company likewise to agree to carry the bonds falling due during the fur-

ther period of twelve additional months thereafter, and likewise that no foreclosure proceedings shall be begun during such further period provided that the interest upon said bonds and insurance and taxes upon the property covered by the mortgages held by said Detroit Trust Company are kept paid during such additional twelve months.

Seventh. That all of the unsecured creditors of said Lumber Company not parties to this agreement make, execute and deliver to said First Federal Trust Company assignments of their demands against said Lumber Company in form satisfactory to said George A. Kennedy, P. E. Bowles and A. P. Welch together with authorization to said last-named parties to cause said Trust Company to forbear bringing any suit or action upon such claims against the Lumber Company during the period of two years from the date hereof, or during such lesser period during which the parties hereto may provide for the payment of the taxes, insurance and interest as aforesaid, and with authority to said Trust Company to commence suit upon such claims when so directed by said George A. Kennedy, P. E. Bowles and A. P. Welch.

Said Lumber Company shall place in the hands of said George A. Kennedy, P. E. Bowles and A. P. Welch a statement showing the amount due from it to each of its creditors, with a written admission by each creditor that no more than such amount is due to it.

Eighth. That the Lumber Company shall waive the benefit of all Statutes of Limitations to the satis-

faction of said George A. Kennedy, P. E. Bowles and A. P. Welch, during the period for [137] which the creditors agree to forbear bringing suits upon their demands.

Ninth. That all moneys advanced by the parties hereto shall be paid out by the said First Federal Trust Company directly for the purposes for which such moneys are to be loaned, to wit, the payment of taxes, insurance, interest on bonds, and other expenses as hereinbefore set forth.

Tenth. So many of the directors of said Lumber Company as may be required by the said George A. Kennedy P. E. Bowles and A. P. Welch to place their resignations in the hands of said three persons last named, so that their successors may be elected, whenever the said three persons last named may desire.

Eleventh. Any advances that may be made pursuant to the provisions of this agreement to be first repaid to the parties advancing the same before any of the other moneys owing by said Lumber Company except those secured by the said mortgages to the Detroit Trust Company, shall be paid.

Twelfth. It is understood that one of the smaller creditors of the Lumber Company lives in New Zealand, and in the discretion of said George A. Kennedy, P. E. Bowles and A. P. Welch, this agreement may be declared operative without securing his consent, the Lumber Company assuming the responsibility, however, of obtaining his consent thereto.

The said George A. Kennedy, P. E. Bowles and A. P. Welch, their successor or successors, shall have

power only to act unanimously and not by a majority.

This agreement may be executed in separate copies by the several parties hereto.

The said George A. Kennedy, P. E. Bowles and A. P. Welch may in their discretion, and at the expense of said Lumber Company, have made a complete audit of the affairs of said Lumber Company, and if upon the information disclosed by such audit, or upon other information satisfactory to them, they are satisfied that [138] the condition of said Lumber Company is as represented in this agreement, then they shall, when the same has been signed by all of the parties, and the signed copies have been delivered to said three persons in this paragraph named, declare this agreement operative by a writing mailed to each of the signers thereof.

In the event of the resignation, removal or death of the representative of either of the parties hereto in Paragraph First named, a new representative may be appointed by such party, by written notice served upon the remaining representatives. Any of such parties may, by written notice likewise served upon the remaining representatives, remove its representative at any time, and wherever the said George A. Kennedy, P. E. Bowles and A. P. Welch are herein referred to, the said names shall be taken to include and apply to any successor or successors of said person or persons appointed as herein provided.

It is understood that the undersigned shall not bring any suit or action upon their claims against the Lumber Company during such period for which

they may provide the additional moneys to be loaned to said Lumber Company as aforesaid, provided, however, that said George A. Kennedy, P. E. Bowles and A. P. Welch may in their discretion at any time cause suit to be brought or other appropriate proceedings commenced to foreclose the mortgage or mortgages to be given by said Lumber Company to secure the indebtedness of the parties hereto and the other creditors hereinbefore referred to, and to that end the parties hereto agree to assign their demands against said Lumber Company to said Trust Company when called upon by said last named parties so to do.

This agreement is made for the benefit of the parties hereto only, and not for the benefit of others.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized, and their respective corporate seals to be affixed, the day and year first above written. [139]

Exhibit "A-2"—Contract Between S. E. Slade Lumber Co. and First Federal Trust Company of San Francisco.

THIS INDENTURE, made as of the 2d day of June, A. D. 1915, between S. E. Slade Lumber Company, a corporation incorporated under and by virtue of the laws of the State of California and having its principal office for the conduct of its business in the city and county of San Francisco, in said State, (and being duly authorized to do business in the State of Washington), party of the first part (hereinafter called "mortgagor"), and First Federal

Trust Company of San Francisco, a corporation incorporated under and by virtue of the laws of the State of California, and having its principal office for the conduct of its business in the city and county of San Francisco, in said State, and Milton R. Clark of said city and county of San Francisco as trustee, parties of the second part (hereinafter called "mortgagees").

WITNESSETH: That in consideration of the sum of twenty-five thousand dollars (\$25,000) loaned to the mortgagor by The First National Bank of San Francisco, a national banking corporation, The American National Bank of San Francisco, a national banking corporation, Welch and Company a corporation organized and existing under the laws of the State of California, Coats-Fordney Logging Company, a corporation organized and existing under the laws of the State of Washington, Saginaw Timber Company, a corporation organized and existing under the laws of the State of Washington Slade-Wells Logging Company, a corporation organized and existing under the laws of the State of California, United States National Bank of Portland, Oregon, a corporation organized under the national banking laws of the United States, Humptulips Logging Company, a corporation organized and existing under the laws of the State of Washington, and Sudden Estate Company, a corporation organized and existing under the laws of the State of California, in the proportions and evidenced by the promissory notes of the Mortgagor as hereinafter described; and in consideration [140] of such further sums of

money as may be advanced to or for the account of the mortgagor by the said nine corporations last above mentioned or any of them, as hereinafter in this instrument mentioned; and in consideration of the indebtedness of the mortgagor S. E. Slade Lumber company to various corporations and individuals as hereinafter mentioned and described amounting to the sum of five hundred eighty thousand, nine hundred forty-three and 79/100 dollars (\$580,943.79), said mortgagor, S. E. Slade Lumber Company has granted, bargained, sold and conveyed and by these present does grant, bargain, sell and convey, unto the mortgagees, First Federal Trust Company of San Francisco, and Milton R. Clark, Trustees, their successors and assigns, all of the following described real and personal property, situate in the county of Chehalis State of Washington, viz:

First. All of the lands, waterfront, timber and other property hereinafter described, together with all the buildings, structures and improvements of every kind and character that are now, or may hereafter be placed upon said lands, and all the rights, ways, privileges, servitudes, appurtenances and prescriptions thereto belonging or in anywise appertaining, and especially including all lumber mills and lumber mill plants, saw-mills, planing-mills, machine-shops, sheds, pump-houses, blacksmith-shops, bars, oil-houses, boilers, engines, pumps, machinery, sprinkler systems, fire apparatus, kilns, power-houses, tools, fixtures, furniture, appliances, shafting, conveyors, electric apparatus, office buildings, logging-roads, tramways, railways and appurte-

nances, rolling stock, locomotives and cars, loaders, rails, ties, stations, platforms, lumber and logging camps and equipments, mill sites and lumber-yards, booms, dwelling-houses, wharves and planking, patterns, boats, tanks, burners, horses, trucks and wagons, and the entire plants and equipments and all improvements or additions, now or that hereafter may be erected or located on any of said lands or premises, or which are or may hereafter be connected with, appertaining to, or used in connection with the same, now owned or hereafter acquired, and all substitutions, replacements or renewals or additions to said lands, premises and property, or any part thereof, and all lands and other property which may be added thereto, and all the timber and other forest products on said lands and premises, or any of them, or that hereafter may be thereon; and all personal property whether enumerated hereinbefore or not, now owned, or which shall be hereafter acquired by the Lumber Company, which [141] shall be situated upon the real property hereinafter described, or which shall be used in connection with any enterprise which shall be located thereon, excepting all logs, lumber, and kindred products paid for, in booms or on mill premises.

A particular description of said lands and premises is as follows:

All those certain pieces or parcels of land situated in the County of Chehalis, State of Washington, known and described as follows:

Lots one (1), two (2), three (3) and four (4) in Block "C"; Lots one (1), two (2), three (3) and four (4)

in Block "D"; all of Blocks "F," "G," and "H"; Lot one (1) in Block fourteen (14); Lots one (1), two (2), three (3), four (4), five (5) and six (6), in Block fifteen (15); Lots one (1), two (2), three (3), four (4), five (5), six (6), ten (10), eleven (11) and twelve (12) in Block sixteen (16); Lots one (1) to twelve (12), both inclusive, in Block seventeen (17); Lots three (3), four (4), five (5), six (6), nine (9) and ten (10) in Block eighteen (18); Lot twelve (12) in Block twenty-five (25); Lots eight (8), nine (9), ten (10), eleven (11) and twelve (12), in Block twenty-six (26); Chehalis Street South of the south line extended of the alley in Block fifteen (15); Newell Street South of the south line extended of the alley in Blocks fifteen (15) and sixteen (16); Harbor Street south of Grant (now Heron) Street; Kansas Street south of the south line extended of the alley in Block seventeen (17); Kansas Street between Lot four (4) in Block "D" and Lot twelve (12) in Block twenty-five (25); the alley in Block "D"; Summit Street west of the east line of Lot twelve (12), Block twenty-five (25) extended north to Lot one (1) in Block "C"; Harbor Street north of the north line extended of the alley in Block twenty-six (26); the unnamed street lying between Blocks fifteen (15), sixteen (16) and seventeen (17) on the north, and Blocks "G" and "H" on the south; all in Samuel Benn's original plat of the town (now city) of Aberdeen, County of Chehalis, State of Washington; said plat being recorded in the office of the Auditor of said County of Chehalis, in Book (1) of Plats, page thirty-nine (39).

Lot (1), Tract twenty-five (25), and all of Tract thirteen (13), Aberdeen Tide Lands; all of the above in Lot two (2), Section nine (9), Township seventeen (17), north of Range nine (9) west of the Willamette Meridian, in Chehalis County, State of Washington.

Also Lots one (1), two (2), three (3), four (4) and five (5) in Block "D"; and Lots one (1), two (2), three (3), four (4), five (5) and six (6) in Block "E," in South Aberdeen; Lewis Street [142] north of the south line of Blocks "D" and "E," South Aberdeen; all in Johnston's Plat of South Aberdeen, recorded in the office of the auditor of said County of Chehalis, in Book one (1) of Plats, page one hundred twenty-five (125); Lots two (2) and three (3) in Tract Eleven (11), Aberdeen Tide Lands; all of the above in Lot eight (8), Section nine (9); and Lot six (6), Section ten (10), Township seventeen (17) north, Range nine (9) west, Willamette Meridian; also the south half of the southeast quarter (S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$) of Section eleven (11); the northeast quarter (N. E. $\frac{1}{4}$), and the south half (S. $\frac{1}{2}$) of the northwest quarter (N. W. $\frac{1}{4}$), and an undivided one-half interest in the southeast quarter (S. E. $\frac{1}{4}$) of Section fourteen (14); also the south half (S. $\frac{1}{2}$) of Section fifteen (15); the northeast quarter (N. E. $\frac{1}{4}$), the east half of the northwest quarter (E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$), and the south half (S. $\frac{1}{2}$) of Section twenty-one (21); all of Section twenty-two (22); the east half of the northeast quarter (E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$), and the northwest quarter (N. W. $\frac{1}{4}$) of Section twenty-three (23); all of Sec-

tions twenty-seven (27) and twenty-eight (28); the southeast quarter of the northwest quarter (S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$), the northeast quarter of the southwest quarter (N. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$) of Section thirty-four southwest quarter (S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$), and the east half of Section thirty-two (32); all of Section thirty-three (33); the northeast quarter and the southwest quarter (N. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$) of Section thirty-four (34); all in Township twenty-one (21), north of Range nine (9) west, Willamette Meridian; also the leasehold interest held under and by virtue of a lease from the State of Washington to said S. E. SLADE LUMBER COMPANY dated March 10, 1910, and recorded May 17, 1910, in the office of the Auditor of said County of Chehalis, in Book twenty-nine (29) of Miscellaneous Records, page five hundred fifty-two (552), in and to part of Harbor area in front of the following described property, viz.: Lots two (2) and three (3), Tract eleven (11), and Tract thirteen (13), Aberdeen Tide and Shore Lands more particularly described as follows: All harbor area lying in front of Lots two (2) and three (3), Tract eleven (11), Aberdeen Tide and Shore Lands, and bounded by the inner and outer harbor lines and the northeasterly line of Lot two (2), and the southwesterly line of Lot three (3) produced across the harbor reserve to the outer harbor line; also all harbor area lying in front of Tract thirteen (13), Aberdeen Tide and Shore Lands and bounded on the northwesterly side by the inner harbor line, and on the southeasterly side by the outer harbor line, and on the southwesterly side by a line drawn from angle point number eleven (11) on

the outer harbor line to angle point number eleven (11) on the inner harbor line, and on the east side by the east line of said Tract thirteen (13) produced across the harbor reserve to the outer harbor line, all as shown on official maps of Aberdeen [143] Tide and Shore Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington; all situate and being in the County of Chehalis, State of Washington; excepting existing rights of way, property and appurtenances of Railroad and Railway Companies, also excepting all public roads and such mineral claims and rights of way for ditches and canals and other rights as are reserved by the United States in its patents to the respective lands.

Second. Also all of Lots 4, 5, 6, and south half of Lot 1, and all of Lot 4, Plat of North Aberdeen, now a part of the city of Aberdeen, County of Chehalis, State of Washington.

Also all Section 5, Township 18, north Range 6 west, Willamette Meridian. All Section 8, Township 18, north Range 6 west. All Section 9, Township 18, north Range 6 west. All Section 17, Township 18, north Range 6 west. All Section 18, Township 18, north Range 6 west. The east $\frac{1}{2}$ of Section 7, Township 18, north Range 6 west. The northeast $\frac{1}{4}$ of southwest $\frac{1}{4}$ of Section 7, Township 18, north Range 6 west. Lots 3 and 4 Section 7, Township 18, north Range 6 west. Southeast $\frac{1}{4}$ of southwest $\frac{1}{4}$ of Section 7, north Range 6 west. Southeast $\frac{1}{4}$ of northeast $\frac{1}{4}$ of Section 20, Township 18, north Range 6 west. Northeast $\frac{1}{4}$ of southeast $\frac{1}{4}$ of Section 20, Township 18, north Range 6 west, Southeast $\frac{1}{4}$ of

southeast $\frac{1}{4}$ of Section 29, Township 18, north Range 6 west. Southeast $\frac{1}{4}$ of Section 15, Township 19, north Range 9 west.

Together with the rents, issues and profits on all of said property.

All of said property in paragraph first, above described is now subject to the lien of a certain mortgage made by mortgagor herein to Detroit Trust Company and Alexander McPherson, as Trustees, on September 1st, 1910, and filed for record in the county auditor's office of Chehalis County, State of Washington, on September 3, 1910, and recorded in book forty-three (43) of Records of Mortgages on pages four hundred and thirty (430) et seq., and also filed as a chattel mortgage in said county auditor's office on September 3, 1910, and also a second mortgage made by said mortgagor running to Detroit Trust Company, a corporation under the laws of the State of Michigan, as mortgagee, to secure the payment of a note dated March 1, [144] 1915, calling for the payment of sixty-nine thousand dollars (\$69,000) with interest at six per cent (6%) per annum;

This conveyance is intended as a mortgage to secure the due payment both principal and interest of the indebtedness of the mortgagor herein described and such further sums as may be advanced to or for the benefit of the mortgagor as herein provided, together with interest thereon and also to secure the due performance of all the covenants, agreements and conditions on the part of the mortgagor to be performed, as herein provided and the lien of this mortgage shall secure the payment of the said indebted-

ness in the following order, to wit:

First. The payment of the following described promissory notes executed by the S. E. Slade Lumber Company to the corporations, and in the amounts hereinafter set forth, each bearing date the 2d day of June, 1915, and payable thirty days after its date and bearing interest at the rate of six (6) per cent per annum from the date thereof, to wit:

- To The First National Bank of San Francisco, a national banking corporation,
in the sum of\$9,550.—
- To American National Bank of San Francisco, a national banking corporation.. 4,475.—
- To Welch and Company, a corporation organized and existing under the laws of the State of California..... 4,700.—
- To Coats-Fordney Logging Company, a corporation organized and existing under the laws of the State of Washington 1,675.—
- To Saginaw Timber Company, a corporation organized and existing under the laws of the State of Washington..... 400.—
- To Slade-Wells Logging Company, a corporation organized and existing under the laws of the State of California.... 1,525.—
- To United States National Bank of Portland, Oregon, a corporation organized under the national banking laws of the United States 1,175.—
- To Humptulips Logging Company, a corporation organized and existing under the laws of the State of Washington... 325.—

To Sudden Estate Company, a corporation
 organized and existing under the laws
 of the State of California..... 1,175.—

[145]

And the payment of said sums and each thereof, together with interest thereon, but without any preference, one over the others, shall constitute a charge or lien upon the property hereby mortgaged prior and paramount to any of the other obligations, principal or interest, hereby secured;

Second. The payment of such further advances as may be made by said The First National Bank of San Francisco, a national banking corporation, The American National Bank of San Francisco, a national banking corporation, Welch and Company, a corporation organized and existing under the laws of the State of California, Coats-Fordney Logging Company, a corporation organized and existing under the laws of the State of Washington, Saginaw Timber Company, a corporation organized and existing under the laws of the State of Washington, Slade-Wells Logging Company, a corporation organized and existing under the laws of the State of California, United States National Bank of Portland, Oregon, a corporation organized under the national banking laws of the United States, Humptulips Logging Company, a corporation organized and existing under the laws of the State of Washington, and Sudden Estate Company, a corporation organized and existing under the laws of the State of California, or either or any of them, to the said First Federal Trust Company of San Francisco for the benefit of said mort-

gagor, within two (2) years from and after date hereof, the principal sum of all such advances not to exceed the aggregate of one hundred twenty-five thousand dollars (\$125,000). Said advances may be evidenced by the promissory note or notes of the mortgagor payable to each of said respective parties for the amount advanced by it, said notes to be payable one (1) day after date and to bear interest at the rate of six per cent (6%) per annum, payable monthly, and to be delivered to the respective payees upon the payment by such payee of the amount of said note to said First Federal Trust Company, to be expended by said First Federal Trust Company for the benefit of said mortgagor. Such advances [146] may be made either before or after default of said mortgagor in any of the terms hereof. Each and every such advance is to be in all respects secured by these presents as fully to all intents and purposes as if the obligation or note evidencing the same were described and set forth at large herein; but nothing herein contained shall impair the right of any of said parties advancing said money to collect any sum so advanced, although such advance be made without receipt by the party so advancing the same of a note or notes evidencing the same, and all such advances, however evidenced, shall be in all respects secured by these presents. It is expressly understood and agreed that such advances are to be made only at the election of the respective parties making the same.

All such advances to the amount of not exceeding one hundred twenty-five thousand dollars (\$125,000) and interest thereon shall constitute, next after the

said nine promissory notes hereinbefore described amounting to twenty-five thousand dollars (\$25,000), a charge or lien upon the property hereby mortgaged prior to and paramount to any of the other obligations, principal or interest hereby secured;

Third. The payment without any preference one over the other to the following named corporations and individuals of the indebtedness owing by the mortgagor to such corporations and individuals as follows, viz.:

To The First National Bank of San Francisco, a national banking corporation, the sum of two hundred and two thousand five hundred dollars (\$202,500) represented by the promissory note of the mortgagor dated August 24, 1914, payable one day after date and bearing interest at the rate of six per cent (6%) per annum, the interest thereon having been paid to and including the 31st day of March, A. D. 1915.

To The American National Bank of San Francisco, a national banking corporation, the sum of ninety-five thousand dollars (\$95,000) represented by ten (10) promissory [147] notes of the mortgagor for ten thousand dollars (\$10,000) each, all dated October 23, 1914, payable on demand and bearing interest at the rate of seven per cent (7%) per annum; there has been paid and credited upon the principal sum of one of said promissory notes the sum of five thousand dollars (\$5,000); interest upon all of said notes has been paid to and including the 31st day of March, A. D. 1915.

To Welch and Company, a corporation organized

and existing under the laws of the State of California, the sum of one hundred thousand dollars (\$100,000), represented by the promissory note of the mortgagor, dated March 3, 1914, payable on demand and bearing interest at the rate of eight per cent (8%) per annum, the interest thereon having been paid to and including the 28th day of February, A. D. 1915.

To Coats-Fordney Logging Company, a corporation organized and existing under the laws of the State of Washington, the sum of thirty-five thousand six hundred eighty-nine and 02/100 dollars (\$35,689.02), represented by thirteen (13) drafts of the mortgagor drawn upon itself to the order of said Coats-Fordney Logging Company. The dates of said drafts, the amounts thereof and the dates when the same are payable, are as follows, to wit:

One draft dated April 16, 1915, payable sixty (60) days after date, for twelve hundred eighty and 37/100 dollars (\$1,280.37);

One draft, dated April 19, 1915, payable sixty (60) days after date, for three thousand three hundred twenty-nine dollars (\$3,329);

One draft, dated April 19, 1915, payable sixty (60) days after date, for three thousand one hundred seventy-one dollars (\$3,171);

One draft, dated April 20, 1915, payable sixty (60) days after date, for seven thousand six hundred thirty-nine and 84/100 dollars (\$7,639.84); [148]

One draft, dated April 23, 1915, payable sixty (60) days after date, for three thousand three hundred nineteen and 13/100 dollars (\$3,319.13);

One draft, dated April 23, 1915, payable sixty (60)

days after date, for two thousand seven hundred eighty-seven and 50/100 dollars (\$2,787.50);

One draft, dated May 3, 1915, payable six (6) months after date, for two thousand two hundred four dollars (\$2,204);

One draft, dated May 3, 1915, payable six (6) months after date, for three thousand one hundred ninety-nine and 89/100 dollars (\$3,199.89);

One draft, dated May 17, 1915, payable six (6) months after date, for seven hundred six and 50/100 dollars (\$706.50);

One draft, dated May 17, 1915, payable six (6) months after date, for four thousand five hundred seventy-one and 88/100 dollars (\$4,571.88);

One draft, dated May 17, 1915, payable six (6) months after date, for one thousand two hundred ninety-three and 06/100 dollars (\$1,293.06);

One draft, dated May 23, 1915, payable six (6) months after date, for six hundred seventy-six and 98/100 dollars (\$676.98];

One draft, dated May 26, 1915, payable six (6) months after date, for one thousand five hundred nine and 87/100 dollars (\$1,509.87).

The mortgagor has promised to pay interest upon the principal sum of each of said drafts at the rate of eight (8) per cent per year from and including the date of said respective drafts. No part of said interest has been paid.

To Saginaw Timber Company, a corporation organized and existing under the laws of the State of Washington, the sum of eight thousand five hundred forty-seven and 20/100 dollars (\$8,547.20), repre-

sented by two promissory notes of the mortgagor as follows, to wit: [149]

One note, dated March 15, 1915, for five thousand six hundred one and 40/100 dollars (\$5,601.40), payable ninety (90) days after date, and bearing interest at the rate of eight (8) per cent per annum, from its date;

One note, dated March 18, 1915, for two thousand nine hundred forty-five and 80/100 dollars (\$2,945.80), payable ninety (90) days after date, and bearing interest at the rate of eight (8) per cent per annum, from its date.

To Slade-Wells Logging Company, a corporation organized and existing under the laws of the State of California, the sum of thirty-one thousand five hundred twenty and 84/100 dollars (\$31,520.84), represented by the promissory note of the mortgagor, dated April 12, 1915, payable on demand and bearing interest at the rate of eight (8) per cent per annum, no interest having been paid thereon.

To United States National Bank of Portland, Oregon, a corporation organized under the national banking laws of the United States, the sum of twenty-five thousand dollars (\$25,000), represented by three (3) drafts of the mortgagor drawn upon itself to the order of said United States National Bank of Portland, Oregon. The dates of said drafts, the amounts thereof and the dates when the same are payable, are as follows, to wit:

One draft, dated March 7, 1915, payable sixty (60) days after date for ten thousand dollars (\$10,000), and bearing interest at the rate of seven (7) per cent

per year from said 6th day of May, 1915.

One draft, dated March 21, 1915, payable May 20, 1915, for ten thousand dollars (\$10,000), and bearing interest at the rate of seven (7) per cent per year from said 20th day of May, 1915.

One draft, dated April 21, 1915, payable June 20, 1915, for five thousand dollars (\$5,000), and bearing interest at the rate of seven (7) per cent per year from said 21st day of April, 1915, no part of said interest having been paid. [150]

To Humptulips Logging Company, a corporation organized and existing under the laws of the State of Washington, the sum of seven thousand fifteen and 10/100 dollars (\$7,015.10), represented by two promissory notes of the mortgagor as follows, to wit:

One note, dated May 25, 1915, for three thousand seven hundred thirty-three and 67/100 dollars (\$3,733.67), payable on demand, and bearing interest at the rate of eight (8) per cent per year from the 20th day of March, 1915, no part of said interest having been paid.

One note, dated May 25, 1915, for three thousand two hundred eighty-one and 43/100 dollars (\$3,281.43), payable on demand, and bearing interest at the rate of eight (8) per cent per year from the 30th day of March, 1915, no part of said interest having been paid.

To Sudden Estate Company, a corporation organized and existing under the laws of the State of California, the sum of twenty-five thousand dollars (\$25,000), represented by the promissory note of the mortgagor, dated March 15, 1913, payable on or be-

fore one year after date, bearing interest at the rate of six (6) per cent per annum, interest thereon having been paid to and including the 16th day of March, A. D. 1915.

To R. J. Lawson, the sum of two thousand dollars (\$2,000), represented by the promissory note of the mortgagor, dated March 26, 1914, payable on demand, and bearing interest at the rate of six (6) per cent per annum; interest thereon having been paid to and including the 25th day of March, A. D. 1915.

To J. I. Brittain, the sum of thirty-five hundred dollars (\$3,500), represented by the promissory note of the mortgagor, dated January 1, 1915, payable on demand, and bearing interest at the rate of six (6) per cent per annum; no interest thereon having been paid.

To Felix Santallier, the sum of five thousand dollars [151] (\$5,000), represented by the promissory note of the mortgagor, dated January 1, 1915, payable on demand, and bearing interest at the rate of six (6) per cent per annum; no interest thereon having been paid.

To Harriet C. Frazer estate, the sum of three thousand eight hundred fifty-two and 99/100 dollars (\$3,852.99), represented by the promissory note of the mortgagor, dated the 15th day of May, 1915, payable on demand, and bearing interest from January 1st, 1915, at the rate of six (6) per cent per annum; no interest thereon having been paid.

To Slade Shipping Company, a corporation organized and existing under the laws of the State of California, the sum of thirty-one thousand eight hun-

dred seventy-four and 22/100 dollars (\$31,874.22), represented by the promissory note of the mortgagor, dated March 18, 1915, for Thirty Thousand Dollars (\$30,000), payable on demand, and bearing interest at the rate of six (6) per cent per annum; no interest thereon having been paid; and by an open book account upon the books of said mortgagor in the amount of One Thousand Eight Hundred Seventy-four and 22/100 Dollars (\$1,874.22).

To Mary I. Slade, the sum of Sixteen Hundred Twenty-four and 83/100 Dollars (\$1,624.83), represented by the promissory note of the mortgagor, dated the 15th day of May, 1915, and bearing interest from January 1st, 1915, at the rate of six (6) per cent per annum; no interest having been paid thereon.

To S. E. Slade, managing owner of the barkentine "Jane L. Stanford," the sum of Two Thousand Eight Hundred Nineteen and 59/100 Dollars (\$2,819.59), represented by an open book account upon the books of said mortgagor.

It is understood and agreed that said mortgagor shall be, and it hereby is, allowed to and including the 30th day of June, 1915, within which to make payment of principal and interest upon the obligations hereby secured including such further advances as [152] may theretofore be made under the provisions hereof; and the mortgagor agrees to pay each and all of said obligations at the time; provided that if such payment is not made of each and all said obligations and demands upon said 30th day of June, 1915, then each and all of said obligations shall forth-

with become due and payable at the option of the mortgagees, and proceedings may be forthwith commenced by the said mortgagees to sell said property as hereinafter provided, but this mortgage shall secure any advances hereafter made to or for the account of said mortgagor as herein mentioned, although the same be made after said 30th day of June, 1915. All such advances shall be evidenced by the promissory note of the mortgagor, payable one (1) day after date of making such advances, and the making of any such advances shall not constitute a waiver of any right then existing in the mortgagees to declare all demands hereby secured to be immediately due and payable, or to foreclose this mortgage.

And the said mortgagor does hereby covenant, promise and agree to pay to the various corporations and individuals hereinbefore mentioned, their successors and assigns, all moneys owing to them and each of them and interest, and all moneys that may be hereafter advanced by any of them pursuant to the terms hereof and interest, secured to be paid as aforesaid.

The mortgagor covenants and agrees that the above-described property and premises are at this date, and shall be kept until this mortgage is fully paid and satisfied, free and clear from all liens and encumbrances whatsoever that shall or may have precedence of this mortgage, except said first and second mortgages above referred to.

The mortgagor covenants and agrees to pay all taxes and assessments, whether general or special,

of whatsoever kind or nature, which shall be levied upon said lands and property, and so much of all taxes and assessments which shall be levied upon or on account of this mortgage, or the indebtedness secured thereby, or upon the interest or estate in said lands and property [153] created or represented by this mortgage, or by said indebtedness, whether levied against the said mortgagor, or otherwise, as together with interest provided for by the said several obligations and this mortgage, shall not exceed interest upon said indebtedness computed at the highest present contract legal rate, in accordance with the laws of the State of Washington, or those of any other State, applicable hereto. And the mortgagor hereby waives any and all claims or right against the mortgagees to any payment or rebate on or offset against the interest and principal of said mortgage due by reason of the payment of any of the aforesaid taxes or assessments.

Should the mortgagor make default in the payment of any of said taxes or assessments, as above covenanted, the mortgagees may (but shall not be required to) pay same, including all such taxes or assessments which appear to be liens upon any of the property hereby mortgaged. The mortgagees may likewise (but shall not be required to) pay off any other charge or demand which is or appears to be a lien upon the mortgaged property. Any sums so paid as in this paragraph provided shall be a further lien on said premises under this mortgage, payable forthwith, with interest at the rate of seven per cent (7%) per annum.

And whereas there are now, or may hereafter be, deposited with Detroit Trust Company, Trustee, policies of insurance on the property of the mortgagor in accordance with the provisions of the first mortgage above referred to, now, therefore, it is agreed that the proceeds of said policies, in excess of the claims of the trustees under said first mortgage and of the mortgagee under said second mortgage, shall be applied by the mortgagor to the payment of the debts hereby secured in the order of their priority, but nothing herein contained shall be construed as making said policies, or any of them, payable to the mortgagee hereunder.

The mortgagor does further covenant and agree, that should any default be made in any of the covenants of this mortgage, [154] the mortgagees may at any time cause the abstract or abstracts of title and the tax histories of the aforesaid mortgaged premises to be certified to date, or may procure new abstracts or tax histories in case none were before furnished, and the moneys paid therefor shall be a lien on said premises added to the amount secured by this mortgage and payable forthwith with interest at seven per cent (7%) per annum.

Should default be made in the payment of taxes or assessments or other charges upon the property hereby conveyed, or should default be made in any of the terms, covenants or conditions hereof on the part of said mortgagor to be performed, or should any action or proceedings of whatever nature be taken by suit or otherwise to foreclose, sell, or realize upon the two prior mortgages herein referred to, or

either thereof, or any bond or obligation secured thereby, or should any suit be commenced against the mortgagor to recover upon any indebtedness claimed to be due from said mortgagor, or should any bankruptcy or insolvency proceedings be commenced by or against said mortgagor, then each and all of the aforesaid principal sums and arrearages of interest, attorney's fees, if any, taxes, assessments and other charges, together with all other sums hereby, including both principal and interest, shall at the option of said mortgagees forthwith become due and payable, anything herein to the contrary notwithstanding, and any action, suit or proceedings whatsoever commenced or taken by the mortgagees to recover on said indebtedness, or any part thereof, or to foreclose, mortgage or sell the property hereby mortgaged shall, without any action on the part of the payees of the several obligations herein referred to or described, or any thereof, be conclusive evidence of the exercise by the mortgagees of the option in this paragraph contained.

If default be made in the payment of any of said sums secured hereby, or any part thereof, either principal or interest, or in the performance by the mortgagor of any other term, covenant or condition hereof on the part of the said mortgagor to be performed, [155] the said mortgagees are hereby empowered and authorized to sell the above-described premises and property, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law, and out of the moneys arising from such sale to retain and apply the same

as follows: first, to the payment of the costs and expenses of sale, including all costs and attorneys' fees incurred in any action or proceeding brought to foreclose this mortgage or recover said indebtedness; second, to the payment of any taxes, assessments, or charges paid by the mortgagees under the terms hereof; third, to the payment of the full amounts of principal and interest due upon the said promissory notes hereinbefore described, payable to the following corporations, to wit:

To the First National Bank of San Francisco	\$9,550.—
To American National Bank of San Francisco	4,475.—
To Welch and Company	4,700.—
To Coats-Fordney Logging Company	1,675.—
To Saginaw Timber Company	400.—
To Slade-Wells Logging Company	1,525.—
To United States National Bank of Portland, Oregon	1,175.—
To Humptulips Logging Company	325.—
To Sudden Estate Company	1,175.—

fourth, after the full payment of the sums aforesaid, to the payment of both principal and interest of all such sums as shall have been advanced under the provisions hereof, by said nine corporations last above named or any of them; fifth, to the payment both principal and interest of all of the other promissory notes, drafts and demands secured hereby as hereinbefore described, and such other sums as may be due hereunder. The surplus, if any, shall be paid to the party or parties found to be entitled thereto.

Should any action or proceedings be brought to collect on the indebtedness or any part thereof hereby secured, or to foreclose this mortgage, the mortgagees shall be entitled to such attorneys' fees in any such suit, action or proceeding, as the court may judge reasonable, which attorneys' fees shall be allowed and paid [156] whether a judgment be recovered or not; and in such action a receiver may, on application of the plaintiffs therein, be appointed by the Court, without notice, to receive any rents, incomes, issues and profits from the above-described property, or any part of the same, and apply them to the payment of the taxes and assessments which may be due or become due during the pendency of the action, and until sale be finally made; likewise to the costs and commissions of the receiver, and the payment of any deficiency which may remain in the debts secured hereby, after the sale of said property, and the application of the proceeds of the sale to the payment of said debts. Said attorneys' fees, and the costs and commissions of the receiver, shall be a lien on said land and secured by this mortgage.

In any action for the foreclosure of this mortgage, the decree therein shall provide that said premises and property shall be sold, so far as may be, if advisable, as a whole in one piece or parcel, and shall provide for any necessary deficiency decree. It is expressly agreed that the mortgagees shall have the right to foreclose this mortgage and sell the real property hereby conveyed irrespective of the fact that said mortgagees or any creditor secured by this mortgage may have received or may hold any assign-

ment, transfer, pledge of or lien upon personal property by way of security for the payment of any of the indebtedness secured hereby, and without first exhausting or resorting to said personal property, or any thereof. But nothing herein contained shall be construed as preventing any creditor hereby secured, or their assigns, from realizing upon any collateral or other security held by such creditor individually, either before or after the commencement of proceedings to foreclose this mortgage.

It is further understood and agreed that the said mortgage may be foreclosed upon any of the defaults herein mentioned, irrespective of whether the indebtedness herein described, or any part thereof, shall or shall not have been assigned to, or shall [157] be held by, the said First Federal Trust Company, either before or after the execution of this mortgage.

Nothing in this instrument contained shall be construed as in any way limiting the right of the mortgagor to cut or remove timber from the premises and property covered hereby and converting the same to its own use, free and clear of the lien of this instrument, so long as such cutting or removing is done in accordance with the provisions of the first mortgage above referred to, and so long as the mortgagor is not in default in the performance of any of the covenants, stipulations, conditions and agreements on its part to be performed in said first mortgage, or in this mortgage, contained.

In case of the resignation, incapacity or inability to act hereunder of said First Federal Trust Company, it shall be lawful for The First National Bank

of San Francisco, American National Bank of San Francisco and Welch and Company, corporations hereinbefore mentioned herein, to appoint a successor by a writing by representatives of all three said corporations signed.

In case of the resignation, removal, incapacity or inability to act hereunder of the said Milton R. Clark, it shall be lawful for said First Federal Trust Company, or its successor in trust, to appoint some male adult citizen of the United States to act as one of the trustees hereunder in his place.

In case of the resignation, incapacity or inability to act hereunder of said First Federal Trust Company, or its successor, for the time being, and in case no successor has been appointed, and until the appointment of such successor, all the power herein given to said First Federal Trust Company shall for the time being vest in said Milton R. Clark, or his successor in trust, and in case it shall be impossible, or be deemed impossible by said First Federal Trust Company, or its successors, for the time being for it lawfully to do or perform any act or acts necessary or proper for it to do under the terms of this instrument, then and in such case said [158] Milton R. Clark, or his successor, for the time being shall with the permission in writing of said First Federal Trust Company, or its successor, have full power and authority to do and perform such act or acts of whatever nature as if he had been specifically authorized thereto. Any act so done by said Milton R. Clark, or his successor in trust, shall have the same effect as if done by said First Federal Trust Company, or

its successor, and shall relieve said First Federal Trust Company, or its successor, of any duty or obligation so to do such act, but any instrument given to discharge or cancel this instrument shall be signed by both of the parties of the second part, or their successors. Said First Federal Trust Company, its successor or assigns, shall have the power at any time by an instrument in writing, duly executed by its officers and under its seal, to remove said Milton R. Clark, or his successor, from his position as one of the trustees hereunder.

Either of the parties of the second part herein may resign or discharge itself or himself of the trust created by these presents by notice in writing to the party of the first part, and to said The First National Bank of San Francisco, American National Bank of San Francisco and Welch and Company, thirty (30) days before such resignation shall take effect, or such shorter time as may be accepted by the parties in this paragraph mentioned, and such resignation shall take effect upon the appointment of a successor in trust to such party of the second part so resigning as soon as such successor in trust shall be appointed.

Should any suit or proceeding be brought against the parties of the second part, or either of them, by reason of any matter or thing by reason of either being parties to this instrument, neither of them shall be under any obligation to appear in or defend such suit or proceedings until indemnified to their satisfaction, but may appear in and defend the same without indemnity at their election, and in such case

shall be compensated for so doing. The parties of the second part shall be fully protected in [159] acting upon any notice, request or other paper or document believed by them to be genuine, and to have been signed by the proper person. They may select and employ suitable agents, attorneys, representatives and employees in the performance of any duties that they may deem necessary to perform hereunder, and a reasonable compensation and expenses, including traveling expenses of such representatives, shall be paid by the party of the first part to the parties of the second part, and in default of such payment, such compensation and expenses shall be a charge upon the property hereby mortgaged. The parties of the second part shall not be answerable in any case for any act or default of any agent, attorney, representative or employee selected by them with reasonable discretion. The parties of the second part shall not be liable for any loss or damage in connection with the performance of their duties hereunder, except for their gross negligence or willful neglect.

The parties of the second part shall be under no obligation or duty to perform any act hereunder, unless requested in writing so to do by duly appointed representatives of said The First National Bank of San Francisco, American National Bank of San Francisco and Welch and Company, and unless indemnified to their full satisfaction for so doing, and if the parties of the second part shall incur any expense of any kind in connection with the performance of their duties hereunder, such expenses shall

constitute a first lien upon the property covered by this mortgage, and shall be secured hereby. The parties of the second part shall have the exclusive right of action hereunder, and no party hereby secured shall be entitled to commence any action to enforce these presents, unless the parties of the second part shall refuse or fail so to do when properly thereunto requested.

The parties of the second part shall not be responsible for the filing or recording of this instrument, or any instrument supplemental thereto, or for insuring against fire of any of the property [160] hereby secured, and shall not be required to keep themselves informed or advised as to the payment of any liens, taxes or other charges against said property.

All recitals of fact herein shall be taken as statements made by the party of the first part, and shall not be construed as made by the parties of the second part, and the parties of the second part assume no responsibility as to the correctness of the same.

The written statements of said representatives of The First National Bank of San Francisco, American National Bank of San Francisco and Welch and Company may be received by the parties of the second part as sufficient evidence of any facts in connection with the duties of the parties of the second part under this instrument and shall be a full warrant to the parties of the second part for any action taken by them upon the faith thereof, and the parties of the second part shall not be chargeable with notice of any default upon the part of the party

of the first part, except upon delivery to the First Federal Trust Company of a specification in writing of such default signed by the representatives of said The First National Bank of San Francisco, American National Bank of San Francisco and Welch and Company.

The appointment of a successor to said First Federal Trust Company, the removal of said Milton R. Clark, or his successor, and the appointment of a successor to said Milton R. Clark, or his successor, may be evidenced by the filing for record in the respective offices where this mortgage may be recorded of an instrument in writing, signed and acknowledged by the parties herein designed as respectively entitled to make such appointment or removal.

The provisions of this instrument shall be held to apply and be binding upon the successor or successors and assigns of both mortgagor and mortgagees.

In Witness Whereof, said S. E. Slade Lumber Company, party of the first part, has caused its corporate seal to be hereunto [161] fixed and this instrument to be signed in its corporate name by its president, and attested by its secretary, for and on its behalf, pursuant to resolution of its board of directors, all as of the day and year first above written.

S. E. SLADE LUMBER COMPANY.

By S. E. SLADE,
President.

Attest: A. H. COLE,
Secretary.

[Seal S. E. Slade Lumber Company, Incorporated
Dec. 30, 1905.] [162]

**Exhibit "A"—Agreement, July 31, 1912, Between
S. E. Slade Lumber Co. and Warren Co.**

THIS AGREEMENT, Made and entered into this 31st day of July, A. D. 1912, by and between S. E. Slade Lumber Company, a corporation, duly organized and existing under and by virtue of the laws of the State of California, and having complied with all the laws of the State of Washington, with reference to foreign corporations, and authorized to do business in the State of Washington, as the party of the first part, and Warren Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Washington, and having complied with all the laws of the State of Washington, and having its principal place of business at Aberdeen, Washington, as party of the second part, Witnesseth:

WHEREAS, The said party of the first part is the owner of all the timber and lands hereinafter particularly described and it has heretofore issued and sold its bonds in the sum of one million dollars, and has secured the payment of such bonds by trust mortgage, given to Detroit Trust Company, such mortgage covering the above mentioned lands, together with others, and which said mortgage provides for the payment annually of certain portions of the principal thereof, and provides for semi-annual payments of interest, and further provides among other things, for the removal of the timber on the said lands by paying to the said Trust Company, Mortgagee, at the rate of three dollars (\$3) per

thousand feet as such timber shall be removed, and a part of the said mortgage has already been paid,

AND WHEREAS, The said party has logged a small portion of the said timber and now has in the water certain saw logs, marked and branded thus:

$\left(\begin{smallmatrix} 3 \\ 4 \end{smallmatrix} \right)$, which shall continue to belong to it, and

first party has to a certain extent, made various improvements with reference to the removal of the said timber, and has on said grounds, logging camps, logging outfits, tools, implements, appliances and provisions. [163]

NOW THEREFORE, It is agreed between the parties hereto as follows:

First. The party of the first part, for and in consideration of the sum of forty thousand dollars (\$40,000), to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, convey and confirm, unto the said party of the second part, and to its successors and assigns, the following described property, to wit:

All of the logging outfit of the said first party, now being and located upon and about the above-mentioned lands, such logging outfit consisting of logging engines, cables, wire, axes, saws, hammers, wedges, blocks and other tools, implements and appliances; intending hereby to convey to the second party, all of the logging outfit of the first party, now located upon or near the lands hereinafter more particularly described; also all of the logging camps of the first party, located on such lands; also all of the first party's camp outfits, consisting of cooking uten-

sils and kitchen and dining-room ware and furniture; also all manner and kind of dams, skid roads, logging roads, and improvements of whatsoever kind or character, except logs in skid roads, now located on any of the said lands; the intention being to hereby convey for said consideration, all of the logging and camp outfit and improvements, except logs in skid roads, of the said first party, located upon the said lands or any thereof, and the said first party does hereby covenant and agree to and with the said second party, its successors and assigns, that it is the owner of all of the said property, and has a good right to convey the same, and that there are no incumbrances upon or against the same, except the above-mentioned trust [164] mortgage, and that it will warrant and defend the title thereto unto the said second party, its successors and assigns, against the lawful claims and demands of all persons whomsoever.

Second. Upon the terms and conditions, and for the considerations hereinafter particularly set out, the first party does hereby give and grant unto the second party, its successors and assigns, the right and privilege of cutting, removing and marketing all of the merchantable timber located, being, standing or fallen upon the following described lands in Chehalis County, State of Washington, to wit:

The South half of the Southeast Quarter of Section 11; the northeast quarter of Section 14; the South half of the Northwest quarter of Section 14; an undivided one-half interest in the Southeast quarter of Section 14; the East half of the Northeast

quarter of Section 23; the Northwest quarter of Section 23; the South half of Section 15; all of Section 22; all of Section 27; the Northeast quarter of Section 34; the Southwest quarter of Section 34; the Northeast quarter of Section 21; the East half of the Northwest quarter of Section 21; the South half of Section 21; all of Section 28; all of Section 33; the Northeast quarter of Section 32; the Southeast quarter of the Northwest quarter of Section 32; the Southeast quarter of Section 32; the South half of the Southwest quarter of Section 32, and the Northeast quarter of the Southwest quarter of Section 32. All said lands being in Township 21 North, Range 9 West Willamette Meridian, in Chehalis County, Washington. And the first party hereby does covenant and agree to and with the second party, its successors and assigns, that it is the owner in fee simple of all the above-described lands and timber, and that there are no incumbrances upon or against the same, except the mortgage hereinabove and hereinafter mentioned. [165]

And the first party does further give and grant unto the second party, its successors and assigns, the right and privilege of going upon the said lands, or any thereof, and placing thereupon, all such logging outfits, camps, improvements, logging roads, logging chutes, dams and other appliances, and generally exercising such privileges, as may be proper or necessary in the orderly removal and marketing of said timber, and the said party hereby agrees to go upon the said lands, and to cut, remove and market all of the merchantable timber on the said lands, whether

the same be standing or fallen, upon the terms and conditions hereinafter particularly set out.

Third. It is agreed between the parties hereto that the second party, its successors and assigns, shall and it is hereby agreed that it will cut and put into the waters of the Humptulips River, or one or more of its branches, or otherwise cut and remove not less than fifty million feet of said timber each and every year until the whole of said timber shall have been cut and removed, and the time for the commencement of the first year within which such amount of timber shall be removed is hereby fixed as September first, 1912; provided, however, in case for any reason the second party does not cut and remove the amount of fifty million feet per year as aforesaid, such failure shall not be considered a breach of this agreement, if the monthly payments of twelve thousand five hundred dollars (\$12,500) are made as hereinafter provided.

Fourth. The said second party hereby agrees and it shall be its duty to cut the said timber in a good and workmanlike manner, and to cut the same clean as it goes, and shall cut, remove and put in the water, or otherwise remove, all of the merchantable timber located on the said lands. The said second party shall be careful about fires, and shall not at any time, have fallen in the woods, an undue amount of timber or logs, all to the end of protecting the said timber and logs from destruction by fire. [166]

Should the second party use for fire wood, for dams or camps or other purpose except skid roads, any merchantable timber, it shall keep an accurate

account and scale thereof, and shall within thirty days after using such timber for such purposes, pay to the said first party the reasonable stumpage value of the timber so used. If the parties are unable to agree upon such reasonable value, then the parties hereto shall agree upon an individual, whose duty it shall be to estimate the amount of timber so used, and to fix the reasonable stumpage value thereof, and the determination of such third party shall be binding upon the parties hereto, and settlement shall be made according to his determination.

It is understood that second party may subsequently take to market, timber which it shall have put into camps, or dams or otherwise except skid roads, and which shall have been paid for as hereinbefore provided, and it is therefore understood that any such timber so used and paid for, and which may be subsequently branded by the second party, with some brand different from the general brand hereinafter provided for, and such timber or logs so used and paid for, shall become and remain the absolute property of the second party, and it shall not be required to make any other or further payments therefor; provided, however, the provisions herein shall not apply to any timber which is at this time placed in any dams, logging roads, logging chutes or otherwise.

Fifth. It is agreed between the parties hereto that the second party shall, and it hereby agrees that it will, until the whole of said timber shall have been cut and removed, on the first day of each and every month, commencing on the first day of September,

1912, pay in cash to the first party, the sum of twelve thousand five hundred dollars (\$12,500) the same representing Three Dollars (\$3) per thousand feet on four million, one hundred and sixty-six thousand, six hundred sixty-six (4,166,666) feet of timber. Should during any such month the second party cut and remove an amount of timber in excess of the aforesaid 4,166,666 feet, then it shall at [167] the end of each such month, pay to the first party, cash at the rate of three dollars (\$3) per thousand feet for all such excess during such month, (except as in this subdivision as hereinafter provided), and second party shall on the first of each month during the life of this contract, make in writing to first party an estimate of the number of feet of timber it proposes or expects to cut and put in during such month, and to the end that it may be known at the end of each month, whether or not any excess has been put in, it shall be the duty of second party to keep an accurate camp scale of the logs put in the water during each such month, and at the end of each month second party shall furnish first party a sworn statement showing the number of logs and amount of feet put in during such month.

But, however, with reference to such excess, if at the end of any month during the life of this contract, the aggregate amounts of advancements theretofore made by second party to first party, should be in excess of the aggregate of the amount of logs at that time put in at said three dollars (\$3) per thousand feet, and if during such month second party should put in more than said 4,166,666 feet, camp

scale, then instead of paying first party on such excess at the rate of three dollars (\$3) per thousand feet as heretofore provided, such excess, or so much thereof, as shall be necessary, shall go to balance accounts and any sum more than sufficient to balance accounts shall be paid by second party to first party. For illustration: suppose first party on November first shall have received from second party an advancement as aforesaid in the sum of \$12,500 and during that month second party puts in one-half of the said 4,166,666 feet, first party would have been paid \$6,250 more than the logs put in during such month would come to at said \$3 per thousand feet, and suppose during December following second party should put in 6,250,000 feet, then second party would not at the end of such month be required to pay to first party any of such excess, because the account would be balanced; [168] that is, the total advancements would equal the total number of feet put in at \$3 per thousand feet; and so this process shall run throughout the term of this contract and at the end of this contract there shall be a final adjustment and settlement between the parties hereto to the end that the total advancement to first party shall equal the total number of feet according to selling scale put in at \$3 per thousand feet. It being understood and agreed that at such final settlement, the amounts received by each party during the entire contract, after the deduction of the driving, boomage and towage charge of one dollar and twenty-five cents (\$1.25) per thousand feet, shall be made to equal each other, by the party who has re-

ceived more than one-half, paying to the other party a sum sufficient to equalize the amounts received.

Sixth. As the logs aforesaid or other timber products are brought to market and sold, the second party shall have the right and it shall be its duty to deduct from the total selling price the sum of one dollar and twenty-five cents (\$1.25) per thousand feet, based upon the selling scale, for booming, driving, towing, railroading or other charges in transporting such logs to market, and the remainder of the selling price shall be divided equally between the first and second parties, and the second party shall then have the right to deduct from such one-half belonging to the first party, the sum of three dollars (\$3) per thousand feet, according to the selling scale, and may receive payment in cash or mill paper according to the custom of the mills on Grays Harbor at the time of such sale, and shall pay to the first party and the first party shall accept the remainder of its one-half in cash or mill paper as the purchasing mill or mills shall pay, such remainder if to be paid in cash shall be left at the mill where such logs are sold, for the first party, or if the mill to whom the logs are sold shall according to the custom pay in mill paper, then such remainder coming to the first party shall be issued in such mill paper by the mill purchasing, to the first party and such paper shall be left at such purchasing mill for the first party. [169]

For illustration, if a certain raft of logs contain five hundred thousand (500,000) feet according to selling scale, and such raft be sold for five thousand

dollars (\$5000), the second party should deduct from such five thousand dollars (\$5000) one dollar and twenty-five cents (\$1.25) per thousand feet selling scale for booming, driving, towing, or other charges for transportation, or the sum of six hundred twenty-five dollars (\$625), thus leaving four thousand three hundred and seventy-five dollars (\$4,375), which divided into halves would leave to each party two thousand one hundred eighty-seven dollars fifty cents (\$2,187.50), and second party should deduct from the two thousand one hundred eighty-seven dollars fifty cents (\$2,187.50), belonging to the first party, the sum of three dollars (\$3) per thousand feet, or fifteen hundred dollars (\$1500), and take payment therefor, and turn over to the first party, the balance of six hundred eighty-seven dollars fifty cents (\$687.50). This process of settlement shall apply to each raft of logs as it shall be brought to market and sold.

Seventh. The second party shall have no relationship to or connection with the said mortgage or mortgagee, and the first party hereby agrees that it will at all times carry out, live up to and faithfully perform all the terms and conditions of said mortgage and bonds, and will make to said mortgagee all payments of principal and interest, and payments for logging purposes as set out and provided for in said mortgage and bonds. Should the first party fail or refuse to make the said payments or to carry out the terms and provisions of said mortgage or bonds, then the second party for the purpose of protecting itself under this contract, may either declare

this contract at an end, or may in its discretion make all such payments provided for in such mortgage and bonds, and charge such payments to the first party and deduct the same out of any moneys which may be payable then or thereafter from the second part to the first party, under this contract.

[170]

Eighth. The second party hereby agrees that it will seasonably pay all its labor and any and all other charges which if left unpaid would be entitled to a lien upon or against such saw logs or other timber product; that it will not suffer or permit any lien of any kind or character to attach to and be foreclosed or enforced against any of the said logs or timber products, and that it will make all payments herein provided to be made, promptly and strictly in accordance with the provisions and terms of this agreement and that it will faithfully and promptly carry out and perform all the terms and provisions of this agreement devolving upon it, and time is hereby made of the essence of this contract.

It is further agreed between the parties hereto that for the breach of this contract in any substantial point, by second party, it would be very difficult, if not quite impossible, to prove in any court, with any degree of certainty, the actual damage to first party because of any such breach or failure by second party, and therefore and for the purpose of expressly agreeing upon and settling in advance such damage to first party, it is hereby expressly agreed by and between the parties hereto, that for any failure or breach of this contract, on the part of the sec-

ond party, which results in the cancellation or annulment of this contract, the actual damages resulting therefrom to the first party, is and shall be by all courts and parties found to be and held to be the sum of fifty thousand dollars (\$50,000), and it is further agreed between the parties hereto that such sum is and will be the actual and agreed damages under such circumstances, and that the same shall be liquidated damages, representing the actual amount of such damages, and in no sense of the word a penalty, and that in any suit or action by the first party for the recovery of said sum of money, second party shall not be entitled to prove or undertake to prove, in the event of any such breach or violation, any other or less sum as said actual damages. [171]

But if such breach or violation occur, and it be so held by the Courts, then the first party shall be entitled to judgment as a matter of course in the sum aforesaid. In order that the first party may be better protected in case of such a breach of this contract by second party, the second party agrees that it will not during the life of this contract, mortgage any of its property or suffer or permit either the Humptulips Driving Company, Grays Harbor Boom Company, or Humptulips Towing Company to mortgage any of its or their property.

Should it be found or decreed that first party has violated this contract and same should be annulled, then second party may remove from said lands all of its logging outfit, tools, implements and appliances, or should it be found and decreed that the second party has violated this contract and the same

should for that reason be annulled and the second party should have paid in cash the penalty in this subdivision provided, then it the second party may remove from the said lands its said logging outfit, tools, implements and appliances, but shall forfeit to first party all improvements in the way of dams, skid roads, logging roads, logging chutes, camps and other like permanent improvements.

Ninth. Neither of the parties hereto shall be permitted to declare or seek to declare this contract terminated, ended or forfeited, because of any violation thereof by the other party, until and unless such party claiming such violation shall have given to the party so violating, at least fifteen days written notice of such claimed violation and demanded compliance with the contract in respect to the violations set up in such writing.

Tenth. It shall be the duty of the second party to be at all expense in logging the said timber and putting the same into the water or otherwise and getting the same to market and selling the same, and the said first party shall not be required to be at any expense in any of the matters aforesaid, except to participate in the booming, driving and towing charges as hereinbefore [172] provided and the second party shall seasonably and before the same becomes delinquent pay all the taxes levied or lawfully charged upon or against any of its property including its logging outfit, and it shall be the duty of the first party to seasonably and before the same becomes delinquent pay and discharge all taxes lawfully levied or charged upon or against any of said timber and

timber land; but, however, as to any of the said logs which are in the water or in the boom or in storage each party shall pay one-half thereof.

Eleventh. It shall be the duty of the second party as or before it puts said logs into the water or on cars to plainly and distinctly mark and brand both ends of each log, with the following brand, to wit: S E S, or any other brand which the parties hereto may agree upon, and such brand or brands shall be by the second party recorded as required by law, and second party shall not place the said brand or brands upon any other logs whatsoever, and shall not use the said brand in any other manner or way while this contract is in force.

Twelfth. It is understood between the parties hereto that in all probability the second party, its successors and assigns, will put the said timber and logs into the Humptulips River or some branch or branches thereof, and cause the same to be floated down the said stream or streams towards market, and the said second party agrees that when said logs are in the water it will use a reasonable effort to bring said logs to market with reasonable dispatch. But, however, this provision shall not prohibit second party from in any other manner transporting said logs to market.

Thirteenth. It shall be the privilege and duty of the second party to sell said logs, and it may use its own judgment as to whom (except as to the preference right hereinafter provided) and at what price and when and upon what terms it will sell such logs; provided, however, it shall use a reasonable discre-

tion in selling logs only to reasonably responsible persons and concerns, and shall sell such logs at the going or market price and generally [173] in the sale of such logs it shall be controlled by the prevailing customs at that time in vogue on Grays Harbor. It shall bear all responsibility and liability, connected with any mill or other paper which it may take or receive on account of the purchase price of such logs, and the first party shall stand all responsibility and liability on account of any mill or other paper which it may receive for its portion of the selling price, as herein provided, in connection with the sale of said logs but not any paper issued to second party. Each raft of logs shall be settled for and verification statement thereof shall be rendered.

It shall be the duty of second party to make to first party accurate statements showing the number and amount of logs put into the water, or on cars and the number and amount of logs sold together with the sale price and the amounts deducted as herein provided, and the amounts paid to the first party, and such statement shall be made every three months.

The first party or any of its duly authorized officers or agents shall have the right at any time during business hours to inspect all scale sheets in so far as the same may concern the said timber or logs, and inspect such of the books of the second party as may tend to give light or information to *is* concerning the said logging operation, to the end that it may obtain information to which it may be entitled under this contract.

Fourteenth. Whereas the first party now has a certain contract or contracts with one W. T. Cam-
erson and the Aberdeen Timber Company, concern-
ing the taking of logs over and across certain lands,

NOW, THEREFORE, the first party does hereby
sell and assign to second party such contract or con-
tracts in so far as they have reference to removal
of first party's timber and agrees to make a separate
transfer and assignment thereof to second party,
[174]

Fifteenth. In as much as the first party does now
own and operate a certain sawmill in the city of
Aberdeen, Washington, and may continue to own and
operate the same.

NOW, THEREFORE, it is agreed between the
parties hereto that the said first party shall have the
preference right to purchase such of the said saw
logs as it may need for the operation of its said mill
or any addition or renewals thereof, but in order to
exercise such preference right the first party must
purchase such logs upon as good terms and scale as
second party may be able to obtain from responsible
persons or concerns elsewhere on Grays Harbor.
The first party shall not have the right to purchase
said logs or any thereof except it be willing to give
and does give as good a scale and as high a price and
as good terms as other reasonably responsible mills
on Grays Harbor are willing to give. The intention
being that the first party shall merely have the pre-
ference right to purchase said logs for the operation
of such mill or mills on the same terms and condi-
tions the second party is able to obtain from other

mills or persons on Grays Harbor. Should second party be dissatisfied with the scale given by first party it shall have the same right to take away such logs so scaled as it would have to remove such logs for the same reason from any other mill.

It is not meant hereby to indicate that second party shall be required at any particular time or times to sell said logs or any thereof, but on the contrary it shall be the sole judge as to when and upon what terms and conditions it will sell such logs.

Should the first party at any time sell the said mill or lease the same for operation, it shall have the right to assign to such person or concern to whom such mill may be sold or leased, the preference right to purchase logs in this paragraph provided. [175]

Sixteenth. The terms and conditions of this agreement shall not and cannot be in anywise by either party hereto modified, changed, altered, added to or subtracted from, except by an agreement in writing duly executed by the parties, and no attempt at such change, alteration, modification, addition or subtraction shall be binding on either of the parties hereto or be enforceable in any Court or elsewhere, except such be in writing and executed as aforesaid.

Seventeenth. It is understood and agreed between the parties hereto that each of such parties shall be bound and obligated to faithfully, fully and promptly carry out, fulfill and perform all the terms and obligations hereof devolving upon such party, and for a breach of this contract in any substantial points or manner by either party, the other party

shall upon giving the written notice hereinabove provided for, be entitled, at the expiration of the time named in said notice, to at once declare this contract and all the rights and privileges thereunder ended, and all rights and privileges of the party so breaching this contract shall cease, except as to such portion of the contract as shall have heretofore been carried out and performed. But if, however, before the date of the expiration of such notice the party in default shall perform such act as to which it is in default, such forfeiture cannot be enforced.

Eighteenth. The terms and conditions of this agreement are binding upon each of the parties hereto their and each of their successors and assigns, in so far as such terms and conditions devolve upon such party. The second party shall not sell, assign or transfer or undertake to sell, assign or transfer this contract or any interest therein, without first having obtained the written consent of the first party so to do, and any attempted sale, assignment or transfer in violation of this subdivision, shall at the option of the first [176] party to be void and of no force or effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in triplicate on this 31st day of July, 1912.

S. E. SLADE LUMBER CO.

By (Signed) S. E. SLADE,
Its President.

Attest: (Signed) A. H. COLE,
Its Secretary.

WARREN COMPANY,
By (Signed) GEORGE F. STONE,
Its President.

Attest: (Signed) M. J. BEATTY,
Its Secretary.

State of Washington,
County of Chehalis,—ss.

On this 8th day of August, 1912, before me personally appeared George F. Stone and M. J. Beaty, to me well known to be respectively the president and secretary of Warren Company, the corporation which executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the said corporation for the uses and purposes therein mentioned, and each on oath stated that he was authorized to execute the said Instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above in this certificate written.

(Signed) J. B. BRIDGES,
Notary Public for the State of Washington, Residing
at Aberdeen. [177]

State of California.

City and County of San Francisco,—ss.

On this 31st day of July, 1912, before me personally appeared S. E. Slade and A. H. Cole to me well known to be respectively the president and secretary of S. E. Slade Lumber Company, the corporation

which executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument and that the seal affixed thereto is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above in this certificate written.

(Signed) ROBT. J. TYSON,
Notary Public for the State of California, Residing
at San Francisco. [178]

**Exhibit "B"—Letter, May 26, 1914, S. E. Slade
Lumber Co. to Warren Co.**

(COPY)

Warren Company,
Aberdeen, Wash.

Gentlemen:

Referring to contract dated July 31, 1912, between the undersigned, S. E. Slade Lumber Company, and Warren Company, for the logging of certain timber in Township 21 North, Range 9 West, Chehalis County, Washington, you are hereby notified that you are now in default under the terms of that contract for failure on your part to pay the sum of \$12,500 which became due under said contract on May 1, 1914, and demand is hereby made upon you for the payment of the said sum of \$12,500, and unless said sum is paid by you within fifteen days after the service of this notice upon you, you will be liable

to be proceeded against for forfeiture of said contract and subjected to the payment of the damages stipulated in said contract. Your attention is called to paragraph 9 of said contract, pursuant to which this notice is given to you.

Dated, May 26, 1914.

S. E. SLADE LUMBER COMPANY.

By W. B. MACK, Secy.

Mgr. [179]

**Exhibit "C"—Assignment, June 19, 1914, S. E. Slade
Lumber Co. to H. P. Brown.**

WHEREAS, on the 19th day of June A. D. 1914, The Warren Company, a corporation, under the laws of the State of Washington, made, executed and delivered to the S. E. Slade Lumber Company, a corporation, a document in writing entitled an "Option," a copy of which is hereto annexed, marked Exhibit "A," and made a part hereof;

And now, July 1st, 1914, for value received, the above-named S. E. Slade Lumber Company, a corporation organized under the laws of the State of California, have and do hereby sell, assign, transfer and set over unto H. P. Brown, of San Francisco, State of California, all of its right, title, interest and claim in and to the above-mentioned "Option," together with all of its rights therein and obligations thereunder.

IN WITNESS WHEREOF, the said S. E. Slade Lumber Company have caused these presents to be executed by its President and attested by its Sec-

retary the day and year aforesaid.

S. E. SLADE LUMBER COMPANY,

By (Signed) S. E. SLADE,

President.

Attest: (Signed) A. H. COLE,

Secretary [180]

Exhibit "D"—Minutes of Trustees.

Minutes of First Meeting of Board of Trustees of Humptulips Logging Company, a Corporation of Aberdeen, Washington, Held in the Office of Messrs. Bridges and Bruener, Attorneys-at-law, in Aberdeen, Washington, on the 18th day of July, 1914, at the Hour of 9:15 O'clock A. M.

The first meeting of the Board of Trustees of Humptulips Logging Company, a corporation, was held immediately after the first meeting of the Stockholders of said company, in the City of Aberdeen, Washington, on the 18th day of July, 1914, at the hour of 9:15 A. M., in the office of Messrs. Bridges & Bruener, Attorneys at law, all of the trustees, to wit:

H. P. Brown, W. B. Mack, and C. A. Pitchford, were present and participated in the meeting. All of the trustees took the oath of office as required by law, and said oaths were ordered filed.

Mr. H. P. Brown elected chairman of the meeting and M. W. B. Mack, was elected Secretary thereof.

The first question before the meeting, was the election of officers. Upon motion duly made, seconded and unanimously carried, the following were elected as the officers of the company to act in such capacity

until the next regular annual meeting of the Board of Directors, as provided in the By-laws or until their successors be duly elected and qualified:

H. P. Brown, President,

W. B. Mack, Vice-President.

C. A. Pitchford, Secretary and Treasurer.

The subscriptions of H. P. Brown, W. B. Mack and C. A. Pitchford to the Capital Stock of the Company, were accepted by the Board and ordered filed with the Secretary.

The Secretary was instructed to have printed certificates of Stock, such certificates to bear the name of Humptulips Logging Company, the amount of its capitalization [181] and the par value of each share, and such certificate and the margin thereof, to be in other respects in the ordinary and usual form.

A Seal bearing the following impression—

“Humptulips Logging Company, Aberdeen, Washington, Incorporated, July 16th, 1914.”

was presented to the meeting and accepted as the corporate seal of the company, and it was ordered that the impression of the seal be made on the face of these minutes.

The next question before the Board was the payment to the corporation of the Capital Stock subscribed for, and the question of acquiring such personal and real property necessary, proper, useful convenient or advisable for the purpose of engaging in the logging business, and in general of doing such things and purchasing such property for the purpose of carrying out the purposes for which the cor-

poration was organized. On this question, H. P. Brown, as an individual, and not as a Trustee of the Company, made to the Board the following statement and proposition:

“The Warren Company, a corporation of Aberdeen, Washington, heretofore engaged in logging the timber lands of the S. E. Slade Lumber Company in Township 21, Range 9 West, under contract with the latter company, is insolvent. Said Company is the owner of the stock of the Grays Harbor Boom Company, a corporation, of the Humptulips Driving Company, a corporation, and of Humptulips Towing Company, a corporation, all of Aberdeen Washington; of approximately twenty (20) million feet of logs lying in and about the Humptulips River, in the boom of the Grays Harbor Boom Company, in the flow waters of Furlough Creek, and in and about the camps of the said Warren Company in Township 21, Range 9 West; of a large logging outfit, camps, skidroads, dams, engines, and a vast amount of other personal property that it has used in the operation of its logging [182] business; also certain real estate. The assets of the said company will be more particularly described in the option which will be later presented to the Board. The liabilities of the company aggregate approximately \$450,000.00, divided as follows:

- A. To general creditors, including labor liens,
\$125,000.00
- B. To moneys due to Stockholders for advance-
ments made, approximately, \$250,000.00

C. To S. E. Slade Lumber Company for advancements due under the contract referred to and for liquidated damages for the breach of said contract, \$75,000.00

That said Warren Company, in order to pay its general creditors, including labor, did make, execute and deliver unto S. E. Slade Lumber Company, a corporation, an option, under the terms of which the said Warren Company did agree to turn over to the said S. E. Slade Lumber Company, all of the assets of the said Warren Company, except subscriptions to the capital stock, if any, remaining unpaid, in consideration of the said S. E. Slade Company, either paying the general creditors of the said Warren Company, whose debts aggregate \$125,000 as above stated, or cause the said Warren Company to be released from said indebtedness, the said Warren Company at the same time agreeing to cause its Stockholders Notes outstanding, aggregating as above stated the sum of \$250,000 to be returned to the company and cancelled and to cause its Stockholders to pay the indebtedness owing by the said Warren Company to several banks, and which was guaranteed by the said Stockholders; that said option is in words and figures following, to wit: [183]

OPTION.

Aberdeen, Washington, June 19, 1914.

The WARREN COMPANY does hereby give to S. E. Slade Lumber Company, a corporation, the exclusive right and option for the period of Thirty (30) days from the date hereof, to purchase from it,

properties and assets belonging to the company, as hereinafter set out, for the considerations hereinafter set out. The word "purchaser" hereinafter mentioned, means the corporation to which this option is given, or its assigns. In the event that the said option should not be exercised within the said thirty days, or in the event during that period the said Warren Company should be thrown into the hands of a Receiver or into Bankruptcy or other insolvency proceedings in any court, then this option shall at that time terminate.

The property covered by this option and the consideration and terms and conditions thereof, are as follows:

1. PROPERTY.

All of its saw-logs and other timber products now in any of the waters within the borders of Chehalis County, Washington, being approximately Twenty Million Feet, board measure and any and all saw-logs or other timber products in which it may have any interest and being and lying on the ground, said logs being cut from the S. E. Slade Lumber Company lands tributary to the upper stretches of the Hump-tulips River in said county;

Also all of its logging engines, logging equipment, tools, implements and appliances, wheresoever the same may be located, and the same being located for the main part on the said S. E. Slade Lumber Company lands or near thereto, and a part thereof in the company's warehouse or offices in [184] Aberdeen, Washington;

Also all logging roads, logging chutes, skidroads, logging camps and camp outfit and equipment; all blacksmith's outfits;

Also a certain dam located on Widow Creek, which is a tributary to the East fork of the Humptulips River;

Also any and all cable, wire rope, haulback rope, sleds and other appliances used in and forming a part of the logging outfit and operations of the said Warren Company;

Also any and all counts due or owing to the said Warren Company at this time, or at the time of the actual transfer of such property (the Warren Company, however, retains all of its Books of account);

Also all of the Capital Stock of each of the Humptulips Driving Company, the Grays Harbor Boom Company and the Humptulips Towing Company;

Also any and all horses, wagons, autos, auto-truck, or other personal property owned by the said Warren Company, or in which it has any interest;

Also the following described real estate, to wit:

The SE. $\frac{1}{4}$ of Section 23, and the NE. $\frac{1}{4}$ of Section 26, all in Township 21, North, Range 9, West of the Willamette Meridian, in said Chehalis County, Washington, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining excepting and reserving however, to A. P. Stockwell and J. B. Bridges and to W. T. Cameron, and the C. E. Burrows Company, and to each and all of them, the right and privilege of going upon the said lands or any there-

of, for the purpose of taking saw-logs and other timber products over and across the said lands all as particularly provided in that certain deed from Aberdeen Timber Company to Warren Company, dated October 10th, 1912, and recorded in Book 117 of the Record of Deeds of Chehalis County, Washington, at page 358; [185]

Also the following described contracts, to wit:

A contract between Warren Company and W. T. Cameron, dated October 10th, 1912;

A contract between Warren Company as the first party, and W. T. Cameron and Aberdeen Timber Company as the second parties, and dated October 10th, 1912;

A contract between Warren Company as the first party, and Cameron-Hoover Logging Company as the second party, and dated December 30th, 1913;

A contract between Warren Company as the first party, and W. T. Cameron as the second party, and dated October 10th, 1912;

A contract between S. E. Slade Lumber Company as the first party, and Warren Company as the second party, and dated July 31st, 1912;

A contract between Polson Logging Company, a corporation, as the first party, and the Warren Company and the Humptulips Driving Company as the second party, and dated January 7th, 1914;

A contract between Warren Company as the first party and Cameron-Hoover Logging Company as the Second party, and dated December 1st, 1913;

A contract between Northern Pacific Railway Company and Warren Company, and dated July 17th, 1913; also

A conditional Sale Contract between Big Creek Timber Company as the first party, and Warren Company as the second party, and dated January 8th, 1914.

The intention being to hereby describe any and all of the personal property of whatsoever kind or character of the said Warren Company, except only any liability of the present or any Stockholders of the Warren Company, upon any subscription, written or otherwise, to or for the capital stock of the said Warren Company, or any part thereof, and except any and all moneys actually on hand, and the books of account of the [186] company.

2. CONSIDERATION.

The consideration for the said sale and property, shall be the agreement and assumption by the purchaser, to pay the following debts and obligations of the Warren Company and the said companies of which it holds the capital stock, to wit;

Aberdeen Electric Co	2.50
Aberdeen Sheet Metal Works	4.85
Aberdeen Manufacturing Co.	49.65
Big Creek Timber Co.	8,803.32
C. E. Burrows Co.	195.57
Benson Office Supply Co.	6.65
A. M. Bendetson	861.96
Beckenhauer Drug Co.	22.40
Bridges & Bruener	400.82
Berg, John	11.45
Bay City Lumber Co.	1.75
Brown-Elmore Shoe Co.	8.50
Baker, J. W. Hardware Co.	1.60
Broderick Bascom Wire Rope Co.	41.25

Carstens Packing Co.	554.51
H. L. Cooke Co.	8.71
City Retail Lumber Co.	2.72
Chehalis Produce Co.	1021.63
Cameron-Hoover Logging Co.	4.00
Davidson Bros.	22.65
Douglas Bros.	42.00
Donovan Lumber Co.	48.00
Evans, C. F. W.	114.85
Evans, Mrs. R. E.	38.60
Employers Association	30.00
F. & F. Garage	12.50
Frye & Company	4,671.92
Foster, F. G. Co.	5,971.41
Grays Harbor Blow Pipe Co.	11.81
Gloss Steam Laundry	2.95
Grays Harbor Boiler Works	165.82
Grays Harbor Flour Co.	406.50
Grays Harbor Ship Chandlery	7.90
Gabrielson & Holmer	74.30
Grays Harbor Hardware Co.	1,368.99
Hoquiam Auto Co.	12.75
Hazelwood Co.	89.12
Hunt, E. G.	88.50
Isaacson, L. G. Co.	1,429.12
Industrial Insurance Commission	890.63
Johnson, C. E.	36.00
Jones & Paine	175.00
Johnston Transfer Co.	32.60
Lamb Machine Co.	237.40
Lebo, W. R. Co.	5.60
Loggers & Contractors Mchny. Co.	21.52

Looms, N. T.	230.85
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Like, C. D.	11.75
Lindstrom Shipbuilding Co.	123.48
Multonomah Iron Works	3.27
Mill & Mine Supply Co.	294.99
McPhee, Al.	32.80
McBride & Hamblen	59.35
Meadowbrook Creamery Co.	2.25
Nelson, N.	543.15
Nelson, N. F.	1.50
Northwest Supply Co.	3.45
National Grocery Co.	23.00
Ovitt Company	5.75
Pacific Telephone & Telegraph Co.	7.05
Puget Sound & Alaska Powder Co. ...	363.40
Pacific Fruit & Produce Co.	222.15
Puget Sound Iron & Steel Works	149.50
Poulson Auto Co.	284.82
Roebbling, J. A. Sons Co.	897.28
Robinson, J. J.90
Kelly, Ed.	1.50
Slade Lumber Co.	10.40
Schwabacher Bros Co.	539.32
Standard Oil Co.	1037.30
Willamette Iron & Steel Works	424.10
West Coast Produce Co.	617.90
Waugh, J. S.	10.60
Washington Iron Works	251.85
Washington Paint & Wall Paper Co. ..	3.75
Whiteside Undertaking Co.	50.00
Welsh & Richards Co.	35.75
Western Union Telegraph Co.	17.50

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Grays Harbor Hospital	781.50
Aberdeen Timber Co.....	1,324.10
Bridges & Stockwell	983.52
Taxes (Grays Harbor Boom Co.)—1913	323.69
Overdraft Warren Savings Bank.....	762.50
Polson Logging Co. (Doubtful).....	408.54
Neumeyer & Diamond	750.33
<hr/>	
Total	\$ 29,417.03
Pay-roll to May 31st, 1914	19,259.79
Pay-roll Estimated June 1st to 4th....	570.00
Demand Loans of Hayes & Hayes	6,100.00
Note to Willamette Iron & Steel Wks.	4,000.00
Demand Loan of Miner D. Crary	4,000.00
Demand Loan of National Bank of Com- merce of Seattle, amounting to \$45,000	45,000.00
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Interest on Bills Payable to June 4th, 1914	3,727.02
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Grand Total	\$ 112,273.84

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Also all costs, expenses and attorney's fees in connection with any and all labor liens on saw-logs and other timber products of the Warren Company, and also any and all strictly operating expenses of the said Warren Company and the said three companies with stock it holds, since June 4th, 1914, to the time of the consummation of such sale, and also shall the said purchaser become liable for any of the debts or obligations of the Warren Company, other than

to stockholders and other than those hereinabove particularly described, in an amount not to exceed the sum of \$1,000, the said \$1,000, being for the purpose of fully covering any items of expense which the purchaser should pay and which may for some reason or other have been omitted from the foregoing list; or the said purchaser may pay the said sums of money to the said Warren Company in cash. But in the event the purchaser elects to assume and agrees to pay such debts and obligations, then before such transfer of property shall be made to such purchaser, the latter shall obtain from such creditors, a written statement signed by each of such creditors, to the effect that each such creditor relieves and releases the said Warren Company from any and all liability and elects exclusively to look to such purchaser for payment, and which said releases shall be in all respects to the satisfaction of the Vice President and Secretary of the Warren Company—all to the end that the said Warren Company shall henceforth not be liable for or be called upon to pay any of the said debts or obligations.

3. FURTHER CONSIDERATION.

The further consideration for the said transfer shall be that the purchaser or purchasers shall obtain from the said Cameron & Hoover Logging Company, and from the said Cameron and the said S. E. Slade Lumber Company and Aberdeen Timber Company and J. B. Bridges and A. P. Stockwell, full and complete release of the said Warren Company from any and all of the [189] obligations or duties of the said Warren Company performed or to be per-

formed or done under and by virtue of any of the hereinbefore particularly mentioned contracts, and shall also agree to protect the said Warren Company against any and all demands of Polson Logging Company under and by virtue of the aforesaid Polson Logging Company contract, all to the end that the said Warren Company shall be forever relieved and released of and from all such obligations, and all such releases shall be to the satisfaction of the Vice-president and Secretary of the said company.

WITNESS THE NAME AND SEAL of the said WARREN COMPANY, by its Vice-President and Secretary, all on the day first hereinabove written.

WARREN COMPANY.

By J. B. BRIDGES, (Signed)
Vice-President.

Attest: J. T. EISWORTH, (Signed)
Secretary. [190]

That said option has been duly assigned by the S. E. Slade Lumber Company, to the speaker, H. P. Brown, who is now the owner and holder thereof, with the right and privilege of exercising said option and to purchase the assets of the said Warren Company, upon the terms and conditions therein stated. That he, the said Brown, did heretofore pay off the liens which had been filed against the logs by the laborers, which liens had been duly assigned to the said Brown, and who is now the owner and holder of such labor liens. That the total amount to be paid by virtue of the terms of said option, including labor liens, did not exceed the sum of \$125,000, and that the reasonable and actual value of the assets of the said Warren Company were in excess of \$300,000.

That the logs owned by the said Warren Company and which are in the boom of the Grays Harbor Boom Company, and about the Humptulips River and in the flow waters of Furlough Creek and in and around the camps of the said Warren Company, aggregate over twenty (20) million feet, board measure, and will net \$7 a thousand, even at the present condition of the log market, thus making a total to be realized from logs, of \$142,800, or more than sufficient to pay the indebtedness of the said Warren Company to be assumed by the person exercising said option, of which the said Brown was the owner and holder. That the assets of the said Warren Company, including the assets of the Humptulips Driving Company, the Grays Harbor Boom Company, and the Humptulips Towing Company, were more particularly as follows: The said Brown then exhibited a printed detailed statement of the assets of said various companies mentioned, and presented them to the Board, and are shown as follows, to wit:

[191]

WARREN COMPANY.

ASSETS.

Auto Truck	1/2.....	800.00
Auto Packard	1/2.....	500.00
Buildings Camp #4.....		1,120.42
“ & Equipment Camp #7.....		8,437.21
“ “ “ #8		6,579.67
County Road		6,121.71
Dam #1 Widow Creek.....		6,443.32
Engines		52,537.49
Evans, C. F. W.		50.00

formed or done under and by virtue of any of the hereinbefore particularly mentioned contracts, and shall also agree to protect the said Warren Company against any and all demands of Polson Logging Company under and by virtue of the aforesaid Polson Logging Company contract, all to the end that the said Warren Company shall be forever relieved and released of and from all such obligations, and all such releases shall be to the satisfaction of the Vice-president and Secretary of the said company.

WITNESS THE NAME AND SEAL of the said WARREN COMPANY, by its Vice-President and Secretary, all on the day first hereinabove written.

WARREN COMPANY.

By J. B. BRIDGES, (Signed)
Vice-President.

Attest: J. T. EISWORTH, (Signed)
Secretary. [190]

That said option has been duly assigned by the S. E. Slade Lumber Company, to the speaker, H. P. Brown, who is now the owner and holder thereof, with the right and privilege of exercising said option and to purchase the assets of the said Warren Company, upon the terms and conditions therein stated. That he, the said Brown, did heretofore pay off the liens which had been filed against the logs by the laborers, which liens had been duly assigned to the said Brown, and who is now the owner and holder of such labor liens. That the total amount to be paid by virtue of the terms of said option, including labor liens, did not exceed the sum of \$125,000, and that the reasonable and actual value of the assets of the said Warren Company were in excess of \$300,000.

That the logs owned by the said Warren Company and which are in the boom of the Grays Harbor Boom Company, and about the Humptulips River and in the flow waters of Furlough Creek and in and around the camps of the said Warren Company, aggregate over twenty (20) million feet, board measure, and will net \$7 a thousand, even at the present condition of the log market, thus making a total to be realized from logs, of \$142,800, or more than sufficient to pay the indebtedness of the said Warren Company to be assumed by the person exercising said option, of which the said Brown was the owner and holder. That the assets of the said Warren Company, including the assets of the Humptulips Driving Company, the Grays Harbor Boom Company, and the Humptulips Towing Company, were more particularly as follows: The said Brown then exhibited a printed detailed statement of the assets of said various companies mentioned, and presented them to the Board, and are shown as follows, to wit:

[191]

WARREN COMPANY.

ASSETS.

Auto Truck	1½.....	800.00
Auto Packard	1½.....	500.00
Buildings Camp #4.....		1,120.42
“ & Equipment Camp #7.....		8,437.21
“ “ “ #8		6,579.67
County Road		6,121.71
Dam #1 Widow Creek.....		6,443.32
Engines		52,537.49
Evans, C. F. W.		50.00

Horses, Wagons & Harness.....	1,785.52
Road, Tote #2.....	5,726.60
Real Estate	4,905.00
Road, Tote #1.....	1,551.72
Skidroads Camp #7.....	9,448.88
“ “ #8	10,424.86
Telephone Line	912.20
Tools, Camp #7.....	5,201.82
“ “ #8	5,438.05
Wire Rope Camp #7.....	5,239.15
“ “ “ #8	6,254.91
Dam, Furlough Creek.....	17,848.02
20,400,000 Ft. Logs at \$7.00.....	142,800.00

\$200,136.55

Obligations as shown on option.....\$122,273.84

[192]

HUMPTULIPS DRIVING COMPANY. ASSETS.

Buildings	300.00
Cribbing	64,222.94
Dam #1	6,000.00
Dam #2	14,645.78
Dam #3	23,125.59
Dam, Fairchilds	1,420.42
Roll Dam 34-21-9.....	1,285.23
Roll Dam #2.....	5,870.37
Equipment	5,392.89
Horses	100.00
Hunley Contract	2,700.00

Real Estate	3,939.57
Telephone Line	448.29
Walker Timber	1,000.00
	<hr/>
	\$130,480.08

GRAYS HARBOR BOOM COMPANY.

ASSETS.

Boom Plant	34,608.27
Cavils Michigan	949.77
Dwyer, J. J.	150.00
Equipment	2,568.62
Real Estate	9,905.88
	<hr/>
	\$48,182.54

HUMPTULPS TOWING COMPANY.

ASSETS.

Tola	1,500.00
Oil Scow	256.67
Skookum	13,250.00
	<hr/>
	\$15,006.67

[193]

The said Brown further explained that the said Warren Company had a valuable and extensive logging outfit on the lands of the said S. E. Slade Lumber Company, in Township 21, Range 9; that said country had been extensively opened up by the said Warren Company; that skidroads and other roads had been built, including dams, and other things done and moneys expended for the purpose of facilitating the marketing of said timber. The said Brown then proposed to the Board to assign or cause

to be assigned to the Humptulips Logging Company, said option from the Warren Company, there by giving to the said Humptulips Logging Company all its right, title, claim or interest in the same, thus enabling the said Humptulips Logging Co. to exercise said option, upon the same terms and conditions that the said Brown could or might exercise the same; that in consideration of the sale by the said Brown to the said Humptulips Logging Company, of the assets of the said Warren Company by assigning and turning over to said company the option referred to, the said Humptulips Logging Company should repay to the said Brown, the amounts paid out by him in acquiring the labor liens against the logs of the said Warren Company, including all attorney's fees necessarily paid out by him and with the approval of the court, in taking such assignments, and to fully pay up the subscriptions to the capital stock of the company, of H. P. Brown, W. B. Mack and C. A. Pitchford, and to cause to be executed, and delivered to the said Brown, Mack and Pitchford, certificates of Stock of the said company, fully paid up, in the amounts and in the number of shares to which each of said subscribers are entitled. This would make a total, including the capital stock, of approximately \$225,000.00, to be paid by the new company for the assets of the said Warren Company as described in said Option. [194]

This proposition was discussed at great length by all of the members of the Board, and the matter thoroughly gone into. Mr. W. B. Mack, one of the directors, stated that he was thoroughly familiar

with the assets of the said Warren Company and of what the assets consisted and what the value of said assets were, and said Mack explained at length to the Board, what the new company would get if it accepted the proposition of Mr. Brown, and he considered that the assets of the Warren Company were reasonably worth, conservatively speaking, at least the sum of \$300,000. Before taking any action on the matter, however, the said Board consulted with Mr. A. P. Stockwell, of Aberdeen, Washington, who heretofore had been the manager of the Warren Company, as well as of the Humptulips Driving Company, Grays Harbor Boom Company, and Humptulips Towing Company, and who two or three years before, and for a long time prior thereto, had been the owner of the said Humptulips Driving Company, the said Grays Harbor Boom Company, and of the property now owned by the Humptulips Towing Company, and who was thoroughly familiar with the assets of all of said companies. He went into the matter of said assets, with the Board, very fully, and stated that the assets as represented by Mr. Brown, as shown on the typewritten sheets were taken from the books of the said Warren Company, Humptulips Driving Company, Grays Harbor Boom Company and Humptulips Towing Company, and Mr. Stockwell expressed it as his opinion, that the assets of the said companies which the said Humptulips Logging Company would acquire under the terms of the option, would be considerably in excess of \$200,000.00, and he explained the reasons why said Warren Company had gone insolvent, and why the Stockholders of the said Warren Company were

willing to pay their guarantees to the bank and cancel their notes which the Warren Co. had given them for moneys advanced, stating that said Stockholders were desirous that the [195] general creditors to be paid in full, and that to secure this end they would suffer their losses without expecting any return themselves. That the reasons for the insolvency of the said Warren Company would not be present as far as the Humptulips Logging Company would or might be concerned.

All of the Directors stated that in addition to the advice and opinion of Mr. Stockwell, they had theretofore looked into the matter very thoroughly and had taken the opinions of other loggers qualified to speak on the subject, with reference to the value of the assets of the said Warren Company, and it was finally resolved to accept the proposition of the said H. P. Brown and to purchase the assets of the said Warren Company, by causing said option now held by the said Brown, to be assigned to it, the said new company, the said new company to pay the said Brown for said assets and for the assignment of said option, the following consideration:

1. The repayment to the said Brown, of all moneys advanced by him in securing the assignment of labor liens, being approximately \$20,000.

2. The payment of the subscriptions to the capital stock of the said company by the said H. P. Brown, the said W. B. Mack, and the said C. A. Pitchford.

It was further resolved that the proper officers of the company be authorized and directed to accept

the assignment of the said option from the said Brown, and to exercise the said option within the time limited, and to cause to be transferred to the new company, all of the assets of the said Warren Company, including the stock of the other three companies mentioned, upon the terms and conditions contained in said option, and the President and Secretary of the said company were further authorized and directed to cause the Warren Company to be released from the obligations due to its general creditors and to make such arrangements with said creditors with reference [196] to the payment of their claims by the said Humptulips Logging Company, as they could most advantageously make, and said President and Secretary of the Company were given full power and authority to close said deal and to purchase in the name of the company, the assets of the said Warren Company under the terms and conditions of said option, and in general to sign all papers and to do any and all things necessary for the proper carrying out of the terms of said option and the conditions under which said property of the Warren Company could be acquired.

The President and Secretary of the Company were further authorized to issue to the said H. P. Brown, W. B. Mack and C. A. Pitchford, the capital stock of the company fully paid up, to each the number of shares respectively subscribed for by him.

There being no further business before the meet-

ing, the same was duly adjourned.

(Signed) H. P. BROWN,
Chairman.

(Signed) W. B. MACK,
Secretary. [197]

SPECIAL MEETING OF BOARD OF TRUSTEES OF HUMPTULIPS LOGGING COMPANY, A CORPORATION.

A special meeting of the Board of Trustees of Humptulips Logging Company, a corporation, was held at the office of the company in the City of Aberdeen, on the 1st day of August, 1914, at the hour of 10 o'clock, A. M., all of the Trustees, to wit:

H. P. BROWN, W. B. MACK and C. A. PITCHFORD, being present and participating in the meeting. The President, H. P. Brown, was in the chair, and Mr. Pitchford, the regular secretary of the Company, acted as Secretary of the meeting.

All of said Trustees consented to the holding of said meeting for the transaction of such business as might properly come before it.

The following resolution was upon motion duly made and seconded, unanimously carried:

WHEREAS, Humptulips Logging Company is the owner by assignment, of that certain logging contract entered into on the 31st day of July, 1912, by and between S. E. Slade Lumber Company, a corporation organized under the laws of the State of California, as the party of the first part, and Warren Company, a corporation under the Laws of the State of Washington, as the party of the second part, by the terms of which contract the said S. E. Slade

Lumber Company did give to the said Warren Company, the right and privilege of cutting, removing and marketing all of the merchantable timber on the lands of the S. E. Slade Lumber Company situated in Township 21, North of Range 9, West of the Willamette Meridian;

AND WHEREAS, it is to the advantage of the said Humptulips Logging Company to procure a cancellation of said contract; [198]

AND, WHEREAS, it was necessary for the Humptulips Logging Company in its negotiations with W. T. Cameron, to procure for said Cameron a free right-of-way from the said S. E. Slade Lumber Company, across the Southeast Quarter (SE. $\frac{1}{4}$) of Section 34, Township 21, North of Range 9 West, in Chehalis County, Washington, resulting in a loss to the S. E. Slade Lumber Company of approximately \$2,000.

NOW, THEREFORE, IT IS RESOLVED that the Humptulips Logging Company sell and convey to the S. E. Slade Lumber Company, a corporation, by warranty deed, the following described lands situated in Chehalis County, Washington, to wit:

The Southeast Quarter (SE. $\frac{1}{4}$) of Section 23 and the Northeast Quarter (NE. $\frac{1}{4}$) of Section 26, all in Township 21 North, Range 9, West of Willamette Meridian,

subject, however, to the reservations contained in the deed from Aberdeen Timber Company to Warren Company, and which reservations were set forth in the deed from Warren Company to Humptulips Logging Company; the said Humptulips Logging Com-

pany to reserve also in said deed, a right-of-way for itself, for the purpose of taking saw-logs and other timber products over the same; in consideration of the cancellation hereinabove referred to, and in consideration of the free right-of-way heretofore granted by the said S. E. Slade Lumber Company at the request of Humptulips Logging Company, to W. T. Cameron.

IT IS FURTHER RESOLVED that the President and Secretary of the corporation be authorized and directed to sign and deliver said Warranty Deed to the said S. E. Slade Lumber Company and receive from the latter company a cancellation of said logging contract.

HUMPTULIPS LOGGING COMPANY, a corporation, being the owner of all of the Capital Stock of Grays Harbor Boom Company [199] a corporation, Humptulips Driving Company, a corporation, and Humptulips Towing Company, a corporation, it was resolved to authorize H. P. Brown, the President of the Company, or in his absence, or inability to act, W. B. Mack, the Vice-president of the Company, to vote the stock of the several corporations above named owned by the said Humptulips Logging Company, at any and all Stockholders' meetings of the said respective corporations, giving unto the said H. P. Brown, or in his absence or inability to act, the said W. B. Mack, full power and authority to vote said stock at such meetings.

There being no further business before the meet-

ing, the same was duly adjourned.

(Signed) H. P. BROWN,

President.

Attest: (Signed) C. A. PITCHFORD,

Secretary. [200]

THIS INDENTURE, made and entered into this 27th day of July, 1914, by and between Warren Company, a corporation of Aberdeen, Washington, as the party of the first part, and Humptulips Logging Company, a corporation of Aberdeen, Washington, as the party of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, and the payment or assumption for payment by the said second party, of certain debts and obligations of the said first party, and which said debts and obligations are more particularly mentioned and described in a certain option dated June 19th, 1914, and *give* by Warren Company to S. E. Slade Lumber Company, a corporation, and by the latter company duly assigned to H. P. Brown, of San Francisco, California, and by the said H. P. Brown in turn duly assigned to the second party herein, does hereby grant, bargain, and sell unto the said party of the second part, and to its successors and assigns, the following described personal property located and being in the County of Chehalis and State of Washington, and particularly described as follows, to-wit:

All of its saw-logs and other timber products now in any of the waters within the borders of Chehalis

County, Washington, being approximately twenty (20) million feet, board measure, and any and all saw-logs or other timber products in which it may have any interest at this time and being and lying on the ground, said logs being cut from the S. E. Slade Lumber Company lands tributary to the upper stretches of the Humptulips River in said County, a large [201] portion of said logs being branded with the brands of the said Warren Company as recorded in the County Auditor's office for Chehalis County, Washington.

Also all of its logging engines, logging equipment, tools, implements and appliances, wheresoever the same may be located, and being now for the most part, on the said S. E. Slade Lumber Company lands, or near thereto, and a part thereof being now in the first party's warehouse or offices in Aberdeen, Washington.

Also all of its logging roads, logging chutes, skid-roads, logging camps and camp outfit and equipment, and all blacksmith outfit.

Also a certain dam located in Widow Creek, which is a tributary to the East Fork of the said Humptulips River.

Also any and all of its cable, wire-rope, haulback rope, sleds and other appliances used in and forming a part of its logging outfit and logging operations. Also any and all accounts due and owing to the said Warren Company at this date (not including, however, its books).

Also any and all horses, wagons, autos, auto-trucks, or other like or similar property.

Also all of the capital stock of each the Humptulips Driving Company, the Grays Harbor Boom Company and the Humptulips Towing Company.

Also a certain contract between Warren Company and W. T. Cameron, dated October 10th, 1912, and

A contract between Warren Company, as the first party, and W. T. Cameron and Aberdeen Timber Company, as the second parties, and dated October 10th, 1912, and

A contract between Warren Company, as the first party, and Cameron-Hoover Logging Company as the second party, and [202] dated December 30th, 1913, and

A contract between Warren Company, as the first party, and W. T. Cameron, as the second party, and dated October 10th, 1912, and

A contract between S. E. Slade Lumber Company, as the first party, and Warren Company, as the second party, and dated July 31st, 1912, and

A contract between Polson Logging Company, a corporation, as the first party, and the Warren Company and Humptulips Driving Company, as the second parties, and dated January 7th, 1914, and

A contract between Warren Company, as the first party, and Cameron-Hoover Logging Company, as the second party, and dated December 1st, 1913, and

A contract between Northern Pacific Railway Company and Warren Company, and dated July 17th, 1913, and

A conditional sale contract between Big Creek Timber Company, as the first party, and Warren

Company, as the second party, and dated January 8th, 1914.

The intention being to hereby describe and convey any and all of the personal property of the said Warren Company, except liability, if any, of any stockholder of the said Warren Company, upon any subscription, or otherwise, and except the books of account of the said Warren Company and except any and all moneys of the said Warren Company at this time actually on hand.

TO HAVE AND TO HOLD unto the said party of the second part, and to its successors and assigns, forever.

The said party of the first part does hereby covenant and agree to and with the said party of the second part, its successors and assigns, that it is the owner of all of the [203] above-described property, and that there are no encumbrances upon or against the same, except any unpaid taxes for the years 1913 and 1914, and except certain of the said engines and logging outfit held under a conditional sale contract between Big Creek Timber Company, a corporation, and the said first party, and except the said logging roads, logging chutes, skid roads, and the said saw-logs are subject to a certain contract between S. E. Slade Lumber Company as the party of the first part, and Warren Company as the party of the second part, and dated July 31st, 1912, and except certain loggers' liens against all or a part of the said logs, such liens aggregating in the neighborhood of \$20,000, and the said second party receives the title to the said properties, subject to the

said taxes, the said S. E. Slade Lumber Company Contract, the said conditional sale contract, and the said liens upon the said logs.

By the acceptance of this instrument, the said second party agrees, for itself, its successors and assigns, that no stockholder's liability on subscription of capital stock of the said first party shall be enforced either directly or indirectly, for or on account of any breach of the warranties contained in this instrument.

IN WITNESS WHEREOF, the said first party has caused this instrument to be executed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed, on the day and year first hereinabove written.

[Seal Warren Company, Aberdeen, Wash. Incorporated Dec. 14, 1910.]

WARREN COMPANY,
By J. B. BRIDGES,
Vice-President.

Attest: J. F. EISWERTH,
Secretary. [204]

State of Washington,
County of Chehalis,—ss.

On this 27th day of July, 1914, before me personally appeared J. B. Bridges and J. F. Eiswerth, to me known to be the Vice-president and Secretary, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged to me that the said instrument was the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath

stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

THEO. B. BRUENER,

[Seal of Notary.]

In and for the State of Washington, Residing at
Aberdeen.

Filed for record July 29th, 1914, at 2 o'clock P. M.
at the request of Bridges & Bruener. R. G. TRASK,
County Auditor. [205]

**Exhibit "E"—Agreement, July, 1914, Between
Warren Co. and S. E. Slade Lumber Co.**

THIS AGREEMENT, Made and entered into this
— day of July, 1914, by and between WARREN
COMPANY, a corporation of Aberdeen, Washing-
ton, as the party of the first part, and S. E. SLADE
LUMBER COMPANY, a corporation organized
under the Laws of the State of California but doing
business within the State of Washington and having
its principal place of business in said State of Wash-
ington in the City of Aberdeen, as the party of the
second part, WITNESSETH;

WHEREAS the party of the first part did enter
into a written contract with the party of the second
part, of date July 31st 1912, by the terms of which
the said party of the first part did agree and under-
take to cut, remove, log and market all of the mer-
chantable timber located, being, standing or fallen

upon the lands of the said second party, in Township 21, Range 9 West of the Willamette Meridian, in Chehalis County, Washington, upon certain and numerous terms and conditions,

AND, WHEREAS, the said party of the first part has thrown up and abandoned said contract and refused further to perform the same, and said company is insolvent,

AND, WHEREAS, the said first party has advanced to the said second party numerous and large sums of money in accordance with the terms of said contract and more particularly with the fifth paragraph thereof,

AND, WHEREAS, the said first party desired to assign, sell and transfer unto HUMPTULIPS LOGGING COMPANY, a corporation of Aberdeen, Washington, said contract and all its rights and interests therein, and the said parties of the first and second part desire to exchange releases, one to the other, of any and all claims, demands or causes of action that either of the said parties may have against the other,

NOW, THEREFOR:

1. The said second party does hereby expressly consent to the transfer and assignment by the said first party to Humptulips Logging Company, a corporation of Aberdeen, Washington, of the contract in the premises hereinabove described, together with all the rights, claim, title and interest of the said first party in and to said contract.

2. In consideration of the consent by second party to the assignment by first party of the con-

tract between the parties hereto, hereinabove described, to Humptulips Logging Company, a corporation, and in consideration of the release and discharge by said first party to second party in the next paragraph contained, the said second party does hereby absolutely and forever release and discharge the said first party from any and all claims for damages and from any and all demands or causes of action that it, the said second party, may have, arising out of or to arise by reason of the breach by the said first party of said contract with the said second party, and of the failure on the part of the said first party to carry out and perform said contract, and said second party does hereby expressly waive any and all claims that it, the [206] said second party, may have for liquidated damages as provided for in said contract for the breach thereof, and does hereby, for itself, its successors and assigns, expressly discharge the said first party from all its obligations arising out of said contract or in any wise connected therewith, hereby cancelling in so far as the said Warren Company is concerned, said contract and all claims and demands that the said second party may have against the said first party thereunder; provided, however, that the rights of the first and second party under said contract to the logs heretofore cut by first party on second party's lands, are hereby expressly recognized and kept in force.

3. The said first party, for and in consideration

of the consent by the said second party to the assignment of the contract above referred to, to Hump-tulips Logging Company, a corporation of Aberdeen, Washington, and in consideration of the release and discharge by the said second party of any and all claims, demands and causes of action that the said second party may have or claim against the said first party by reason of the breach by the said first party of said contract, does hereby fully and forever, for itself, its successors and assigns, release and discharge the said party of the second part from any and all claims, demands or causes of action that it, the said first party, has or may have or claim by reason of its contract with the said second party, or by reason of the performance or non-performance of any terms and conditions thereof, or by reason of any moneys paid to the said second party under and by virtue of the terms of said contract, or by reason of any other matter or thing under or by which the said first party may have or claim to have any demand, claim or cause of action against the said second party in any way connected with said contract, or otherwise.

IN WITNESS WHEREOF the parties hereunto have caused this instrument to be executed by their proper officers and the corporate seals of their respective corporations to be hereunto affixed, on the day and year in this instrument first above written.

WARREN COMPANY.

By _____,
Vice-president.

S. E. SLADE LUMBER COMPANY.

By _____,
President.

_____,
Secretary.

_____,
Secretary.

State of Washington,
County of Chehalis,—ss.

On this — day of July, A. D. 1914, before me personally appeared J. B. Bridges and J. F. Eiswerth, to me known to be the Vice-president and Secretary, respectively, of Warren Company, one of the corporations that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.
[207]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____,
Notary Public in and for the State of Washington,
Residing at Aberdeen.

State of California,
County and City of San Francisco,—ss.

On this — day of July, A. D. 1914, before me personally appeared _____ and _____, to me known to be the President and Secretary respectively of S. E. Slade Lumber Company, one of the

corporations that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

Notary Public in and for the State of California,
Residing at San Francisco.

[Endorsed as follows:] Case No. 67-E. United States District Court, Western District of Washington. Detroit Trust Co. et al. vs. S. E. Slade Lumber Co. et al. Petitioner's Exhibit "D." Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Aug. 24, 1916. Frank L. Crosby, Clerk. By _____, Deputy. [208]

*In the District Court of the United States, for the
Western District of Washington, Southern Division.*

No. 67—IN EQUITY.

DETROIT TRUST COMPANY et al., Plaintiffs,
vs. S. E. SLADE LUMBER COMPANY et al.,
Defendants.

Testimony of Receiver and Humptulips Logging Co.
[209] I.

Attached to the petition of plaintiffs for the ap-

pointment of a Receiver is the assent of S. E. Slade Lumber Company, Humptulips Logging Company and Slade-Wells Logging Company, with a prayer that the Court make the order applied for.

II.

At the time of the appointment of the receiver herein, American National Bank of San Francisco and Welch & Company, two of the beneficiaries under the third mortgage, by telegram to the Court requested the appointment of a receiver with power to operate as prayed for in said petition.

III.

Attached to the petition of plaintiffs for the appointment of a receiver, and presented to the Court at the time of such appointment, are the affidavits of John C. Ainsworth, President of United States National Bank of Portland, William J. Patterson, Cashier and Manager of Hayes & Hayes, Bankers, of Aberdeen, H. D. Langille, Almerion P. Stockwell and George B. Perry. These affidavits were also offered and read in evidence at the time of the hearing on the petition of the intervenors.

IV.

The affidavits above referred to, in so far as material, are as follows:

Affidavit of John C. Ainsworth.

I am president of United States National Bank of Portland, Oregon, a creditor of S. E. Slade Lumber Company in excess of \$25,000. We, together with other creditors aggregating in excess of \$500,000, are secured by a third mortgage made by S. E. Slade Lumber Company to First Federal Trust Company

and Milton R. Clark, Trustees, on June 2, 1915. I have investigated and am familiar with the financial condition of Slade Lumber Company, and [210] am satisfied that the Lumber Company is unable at the present time to pay its debts as they mature, and that if the properties of the Lumber Company are forced to sale at the present time they would not bring enough to pay the debts of the company. From my investigation I am satisfied that the appointment of a receiver with power to operate will be a beneficial thing both for the Lumber Company and for its secured creditors, and that the operation of the property by a receiver, under the orders and directions of the Court, will afford the best possible means to furnish money with which to prevent waste and undue deterioration of the property, and to put and maintain the same in such condition that it can bring as nearly as possible its full value when sold, and will furnish moneys to pay taxes and insurance premiums and other incidental charges, and will furnish considerable money for the diminution and extinguishment of the debt secured under the first and second mortgages and thereafter of the third mortgage. I know of no other method under which the property of the Lumber Company can be kept in condition and its debts extinguished, and no other method has been presented by which there is any possibility of saving an equity for the Slade Company. I am informed and believe that S. E. Slade Lumber Company owes, exclusive of interest, approximately \$1,200,000, and that creditors holding approximately \$950,000 in principal amount join in the request for

the appointment of a receiver with power to operate as prayed for.

Affidavit of William J. Patterson.

I reside in Aberdeen, in the State of Washington, and am cashier and manager of Hayes & Hayes, Bankers, and have been such for a great many years. I am intimately acquainted with the various business activities of Grays Harbor County and have had an intimate knowledge of the affairs of the S. E. Slade Lumber [211] Company since it began business in Aberdeen, and know its financial condition at the present time. I am well acquainted with its timber and other lands. In my opinion it is absolutely necessary for the preservation of the property and to prevent the waste and deterioration of the same, that a receiver of the property described in the mortgage be appointed, with power to conduct such operations as will enable the Lumber Company to have its timber lands logged and lumbered and the proceeds applied to the payment of taxes, insurance premiums and other incidental charges, and to the extinguishment of the debts of the company. In no other way than by a logging operation conducted on the timber lands of the company, can the Lumber Company ever raise sufficient moneys to pay the debts due from it to its creditors, and if such operations are not commenced and conducted immediately the property of the company will so deteriorate in value as to be insufficient to pay the debts due from the company. The valuable mill property of the company is, because of insufficient care and attention, due to lack of funds, daily deteriorating in value and being

wasted, and unless something is done immediately for the preservation and upkeep of the mill property it will soon lose the greater part of its value. The Slade Lumber Company is in my opinion insolvent in the sense that it cannot meet its debts as they accrue, and if the property of the Lumber Company is forced to sale at the present time it will not bring sufficient to pay the Lumber Company's debts. In my opinion the appointment of a receiver as prayed for, is the most advantageous plan to adequately conserve the properties of the Lumber Company, protect its creditors and save to the Lumber Company an equity after the debts have been paid. My bank is not a creditor.

Affidavit of H. D. Langile.

I am and have been a resident of Portland, Oregon, for eleven years and during that time have been actively engaged in the [212] timber business, operating chiefly in the States of Oregon and Washington. For five years prior to that time I was connected with the Forestry Service of the United States. I am familiar with timber cruising and with large timber bodies situated in Oregon and Washington, and have been familiar with the timber business in said States, in all of its phases, for the last eleven years. I have been in touch with the large transfers of timber property which have taken place in said States during that time, and am familiar with the logging and lumbering trades and with the timber market in said territory. The present timber market is characterized by a very general desire on the part of owners to sell and little inclination on

the part of capital to buy. Large tracts of timber can now be bought at prices substantially identical with those paid in 1906 and 1907, and I am familiar with many tracts which are now offered at prices much lower than those quoted prior to the recent depression. A number of economic factors have developed which bear directly upon the salability of timber. My experience and judgment impel me to say that fir stumpage at \$3 per M cannot be sold to speculators or investors. Stumpage at that price allows no margin of profit for a speculator, in view of the ordinary price which fir lumber commands. There is much timber that may be acquired by undertaking to pay for it as it is cut. The competition of today in the timber market is between sellers rather than buyers. I am very familiar with the timber holdings of S. E. Slade Lumber Company known as the Stanton Tract, and in my opinion such holdings must be sold to loggers or mill operators, if at all, and I am of the opinion that the value of said tract cannot be secured for the owners, under present conditions, except but cutting and marketing the same. I further believe, as a result of my own efforts to sell the property, that it must be sold on such terms as would enable the purchaser to pay for it out of the proceeds derived from its sale as logs and lumber. [213]

Affidavit of Almerion P. Stockwell.

I have lived in the city of Aberdeen for upward of twenty years and am intimately acquainted with the various timber holdings around Aberdeen, in-

cluding the timber holdings in Township 21, North of Range 9 West, and with the timber lands described in the first mortgage. In the year 1912 the Warren Company was engaged in logging the timber lands of the Lumber Company covered by the mortgage, and I had charge of such logging operations for the Warren Company. By reason of the fact that the Warren Company failed to perform its contract obligations the logging operations were not cleaned up in a proper manner and there is constantly a very decided danger of great loss to the timber by forest fires; that if such a fire ever started in the mortgaged property it would cause irreparable injury and damage thereto because of the condition of the logged over places in the property and because no fire patrol is kept. Because of such conditions there is imminent danger of such a fire unless the customary precautions are taken to prevent same. The danger of fire to the mortgaged property is increased by the fact that in the immediate neighborhood thereof there is a large quantity of logged off lands and because of the fact that several logging operations are now being and have lately been conducted in the immediate neighborhood of said mortgaged property. It is entirely possible to greatly minimize any danger by fire by the employment on the property of a force of men engaged in logging same, on account of the safeguards necessary to be taken by the logger to protect himself and his men and equipment. I am well acquainted with the affairs of the Slade Lumber Company and with the condition of its mill property. Said property is valuable, but is daily

deteriorating in value and wasting, because of the inability and failure of the Lumber Company to care for it. At the present time there are in the neighborhood of twelve million feet of fir logs which [214] have been cut and bucked and which now lie in the woods and have not been moved on account of the financial inability of the Lumber Company to move them. These logs represent a value where they lie of approximately \$70,000. These logs are daily deteriorating in value and will soon be of no value unless they can be removed from the woods and sold. Said logs also constitute an extraordinary fire risk and are subject to be destroyed by any fire. The skidroads which have been constructed upon the property and the moneys which have heretofore been spent in opening up the property so that it could be properly logged, will be entirely lost unless steps are immediately taken to conduct logging operations upon said lands. By far the largest asset of the Lumber Company is its timber lands and there is no way in which the value of said lands can be obtained therefrom, except by a logging operation.

Affidavit of George B. Perry.

I am and for many years past have been an attorney for Detroit Trust Company. In July, 1916, I visited the city of San Francisco for the purpose of protecting the debts due under the first and second mortgages. I investigated the affairs of the S. E. Slade Lumber Company and became familiar with its affairs, and for the purpose of protecting S. E. Slade Lumber Company and its various creditors' plans were devised for the appointment of George

L. McPherson as receiver and for the operation of the property by said receiver. It is within my personal knowledge that the appointment of such receiver, with power to operate, is desired by the following creditors of S. E. Slade Lumber Company:

Detroit Trust Company and Alexander McPherson, Trustees, Detroit Trust Company, American National Bank of San Francisco, California, Welch & Company of San Francisco, California, United States National Bank of Portland, Oregon, Hump-tulips Logging Company of Aberdeen, Washington and S. E. Slade. [215]

The claims of said creditors aggregate approximately \$950,000 of indebtedness and constitutes five-sixths of all of the debts of the Slade Lumber Company.

V.

In addition to the aforesaid affidavits the following evidence and affidavits were offered and introduced in evidence at the hearing. Said affidavits, in so far as they are material, are as follows:

Affidavit of S. E. Slade.

I am president of S. E. Slade Lumber Company, a California corporation, and was such when the first mortgage was made and have been such president ever since. The third mortgage given by S. E. Slade Lumber Company has not been declared in default by the trustees or by any other person, and no specification in writing of any default has ever been delivered to First Federal Trust Company of San Francisco, in accordance with the terms of said third mortgage or otherwise. Prior to the 2d day

of June, 1915, and ever since that date I have, with the knowledge and consent of the creditors secured by the third mortgage, been attempting, in behalf of the Slade Lumber Company, through timber brokers and otherwise, to sell all of our timber lands situated in Township 21, North of Range 9 West, Willamette Meridian, in Grays Harbor County, State of Washington, for \$1,250,000, which price is substantially on the basis of \$2.35 per M feet, board measure, for all the timber on said lands, being the same lands described in the first, second and third mortgages respectively; but neither the said S. E. Slade Lumber Company, nor have I on its behalf, been able to obtain a purchaser for said timber lands at the price aforesaid. I am well acquainted with the values of timber lands in the locality aforesaid and I verily believe that the only method by which a fair value of said timber lands can be realized is to cut the timber and log the same, and [216] that under the contract entered into between George L. McPherson as receiver and Humptulips Logging Company there will be realized for the creditors of Slade Lumber Company a price of not less than \$3 per M feet, board measure, for all the timber on said lands. According to my best information, knowledge and belief, said contract is a fair contract and the only means by or under which all of the creditors of the lumber company can be paid and any possible equity in said lands saved for S. E. Slade Lumber Company. Neither I nor S. E. Slade Lumber Company, nor any person or persons who are stockholders of said Lumber

Company, have now or ever had at any time, either directly or indirectly, any shares of the capital stock of or any interest in said Humptulips Logging Company. Neither I nor any officer of S. E. Slade Lumber Company is now or has been, at any time an officer of Humptulips Logging Company, except that H. P. Brown, now president of Humptulips Logging Company, did from about the month of March, 1914, until the 26th of May, 1916, hold in his name one share of the capital stock of S. E. Slade Lumber Company, which was placed in the name of said Brown by myself to qualify the said Brown as a director in Slade Lumber Company, which office of director said Brown held from March, 1914, until May 26, 1916, at which time his resignation as director was accepted and his stock transferred. Said H. P. Brown never at any time had any substantial interest in said S. E. Slade Lumber Company and has not now any interest therein. During the time the said H. P. Brown held one share of stock in the Lumber Company, he acted as director and vice-president of said S. E. Slade Lumber Company at the request of the trustees under the third mortgage, and not otherwise. W. B. Mack and C. A. Pitchford, or either of them, never were nor are they now stockholders in S. E. Slade Lumber Company, or own or have any interest therein. [217]

**Second Affidavit of John C. Ainsworth, President of
United States National Bank of Portland,
Oregon.**

The indebtedness of S. E. Slade Lumber Company secured under the third mortgage, due the bank which

I represent, figured to the 18th day of August, 1916, is the sum of \$30,627.95. I am familiar with the contract executed by the receiver with Humptulips Logging Company. In my opinion said contract is a just and equitable contract from the standpoint of the S. E. Slade Lumber Company and its creditors, and it is largely to the interest of the creditors of the Lumber Company, and particularly the creditors secured by the third mortgage, that the receiver be permitted to carry out said contract. I am of the opinion that the properties of the Lumber Company are more than adequate to the payment of its debts and if full value can be secured for said properties there will be a considerable equity for the Lumber Company after all of its indebtedness has been paid. I am of the opinion that it will not be necessary to pay all of the debts of S. E. Slade Lumber Company from the revenues derived from the logging operations contemplated in the logging contract which has been entered into. I am of the opinion that within two years from this time, if the contract is carried out in accordance with its terms, the indebtedness of the S. E. Slade Lumber Company will be so materially reduced and the position of the Lumber Company so largely improved that it will be possible to re-finance the obligations of the Lumber Company and provide for the liquidation of all of its indebtedness. I am further of the opinion that before said two years period has expired, the logging operations contemplated in said contract will demonstrate the value of the properties of the Lumber Company to such an extent as to make possible the sale of said properties

at a price more than adequate for the payment of the indebtedness of the Lumber Company. [218] It is plainly to the interest of all the creditors of the Lumber Company that its dead assets, consisting of timber lands, be converted into live and liquid assets, and that a fund be thereby provided for the payment of taxes and maintenance charges, and it is also to the interest of the creditors secured under the third mortgage that moneys secured through a logging operation shall be applied in reduction of the indebtedness secured by the first and second mortgages on the property. I am of the opinion that the contract with Humptulips Logging Company amply protects the receiver, the defendant S. E. Slade Lumber Company and the creditors of said Lumber Company, and does not permit the Humptulips Logging Company or anyone else to over-reach the receiver or the beneficiaries of the estate.

Affidavit of D. B. Fuller.

I am vice-president of American National Bank of San Francisco, which bank is a creditor of S. E. Slade Lumber Company in excess of \$100,000, and which indebtedness is secured under the third mortgage. I believe it will be for the best interests of all the creditors of the Lumber Company, and more particularly for the interest of all the creditors secured by the third mortgage, that the timber lands of the Lumber Company be cut and logged. I am acquainted with the logging contract which has been entered into by the receiver, and in my opinion said contract is a fair and reasonable contract, and that

it will be to the best interests of all the creditors that the contract be kept in force and carried out.

Affidavit of A. P. Welch.

I am president of Welch & Company, a California corporation having its principal place of business in San Francisco. My company is a creditor of S. E. Slade Lumber Company in excess of \$100,000, secured under the third mortgage. (In other respects the affidavit is substantially the same as the affidavit of D. B. Fuller.) [219]

Affidavit of C. B. Wells.

I am president of Slade-Wells Logging Company, a California corporation with its principal place of business in San Francisco. The corporation which I represent is a creditor of S. E. Slade Lumber Company in a sum in excess of \$35,000, secured under the third mortgage.

(In other respects the affidavit is substantially the same as the affidavit of D. B. Fuller aforesaid.)

Affidavit of C. M. Weatherwax.

I am and for many years past have been a resident of the city of Aberdeen and president and manager of Aberdeen Lumber & Shingle Company, a corporation of Aberdeen, which company now is and for many years past has been engaged in the logging and lumbering business in Grays Harbor County. I am familiar with timber lands and the values thereof in said county, and I have been and now am individually the owner of large tracts of timber in said county, and for many years was actively engaged in the logging business. I am very familiar with the timber

lands of the Slade Lumber Company covered by the first mortgage, and my company a number of years ago was part owner of said timber. My company now owns in the immediate neighborhood of said timber a large quantity of timber lands, which under my supervision and control is now being logged into the Humptulips River, and consigned to the public service corporations operating thereon. The Humptulips River is and for upward of twenty years has been one of the most extensive logging and driving streams in Grays Harbor County, and said river is the only outlet for the timber lands of the Slade Lumber Company. In my opinion the sum of \$3 per M feet stumpage is the full market value of the timber lands of the Slade Lumber Company, and if the Slade Lumber Company, the [220] the receiver and the creditors realize \$3 per M feet stumpage on said timber, they will realize a very high stumpage value therefor. In my opinion \$3 per M feet stumpage is as much as any logger can possibly afford to pay for said timber. I have examined and am familiar with the terms of the logging contract entered into between the receiver and Humptulips Logging Company, and in my opinion said logging contract is a very fair and profitable contract for the receiver and for the estate, and by means of said contract the receiver and the estate will realize the full stumpage value of said timber, and such value can only be secured by the logging of the timber under a contract such as has been entered into. Said contract does not permit any undue and unreasonable profits and gains to the Humptulips Logging Company, and considering the

obligation of the Logging Company to finance the logging operations, the depreciation on its equipment, the interest on its investment, its logging expense and other charges not included in logging expense under the contract, the fluctuating market value of logs on Grays Harbor and the risks which the Logging Company must take under said contract, the compensation up to \$1 to be paid to the Logging Company, provided the logs sell for sufficient to pay said \$1 or any part thereof, is a very reasonable compensation to be paid to the Logging Company. Under the terms of the contract, if any profit over and above the \$1 is realized, said profit must be paid to the receiver, and in my opinion such provision is more favorable to the receiver and to the owner of the timber lands than the ordinary and usual contracts of like nature entered into in the past by loggers in Grays Harbor County. In all contracts between an owner of timber and a logger, for the logging of timber, the logger always figures on making the sum of \$1 per M feet over and above all expenses and after paying the stumpage value to the owner as agreed upon, and such \$1 per M is the customary [221] and usual profit which a logger expects to make. In my opinion the only method by which the Slade Lumber Company or its creditors will realize the full value of the timber lands, will be by a contract such as has been entered into, and I am of the opinion that if said logging contract is continued, and the timber is logged and brought to market thereunder, it is reasonable to expect that said timber lands after two or three years of operation can be advantageously sold as a going con-

cern. I am of the opinion that said contract amply protects the Receiver, the Lumber Company and its creditors and does not permit the Humptulips Logging Company to over-reach the receiver in any way.

Affidavit of A. L. Paine.

I am and for many years past have been the manager of National Lumber & Manufacturing Company, formerly the National Lumber & Box Company, a corporation engaged in the logging and lumbering business, with offices at Hoquiam, in Grays Harbor County. My company now is and for many years past has been engaged in the logging of its timber under my conduct and management. I am well acquainted with timber lands in Grays Harbor County and with the values thereof and some years ago was part owner of a large tract of timber tributary to the Humptulips River and in the immediate vicinity of the Slade timber. We logged this timber into the Humptulips River. I am well acquainted with the timber lands of the Slade Lumber Company covered by the mortgage and with the value thereof. I am acquainted with the ordinary and usual provisions contained in logging contracts and am familiar with the terms upon which loggers ordinarily are willing to log timber lands for the owners thereof.

(In other respects the affidavit of A. L. Paine is substantially the same as the affidavit of C. M. Weatherwax.) [222]

Affidavit of William Corkery.

I am and for many years past have been a resident of Aberdeen and for sixteen years past have been engaged in the logging business in Grays Harbor

County, and for the past seven years have been engaged in the logging of timber on my own account, and for the last three and one-half years have been logging timber into the Humptulips River. I am acquainted with the timber lands in Grays Harbor County and the values thereof, and am acquainted with the timber lands of the Slade Lumber Company covered by the mortgage. The only outlet to said timber is the Humptulips River, which stream has for upward of fifteen years been one of the most extensive logging and driving streams in Grays Harbor County. In my opinion the sum of \$3 per M feet stumpage is the full market value of the timber lands of the Slade Lumber Company, and any logging contract which returns to the owner of said timber the sum of \$3 per M feet stumpage on all logs, will insure to the owner the full market value of the timber, which can only be secured by means of a logging contract. I have examined and am familiar with the terms of the logging contract made by the receiver, and in my opinion said contract is a fair and reasonable contract from the receiver's standpoint, and said contract does not permit of any undue or unreasonable gains and profits to the Humptulips Logging Company. In my opinion said contract is particularly favorable to the receiver for the reason that after the logging expense and a sum up to \$1 is paid to the Humptulips Logging Company out of the sale of logs, after the stumpage of \$3 per M is first paid to the receiver, the balance, if any, must be paid to the receiver; in my opinion such profit last described

ordinarily goes to the logger and the logger is entitled to such profit. [223]

Affidavit of O. P. Burrows.

Since 1890 I have lived in Grays Harbor County and am very familiar with the Humptulips River and have lived on lands adjoining said river for sixteen years and have owned timber lands tributary to said river for the same period of time. Said river is and for the past twenty years has been one of the most extensive and successful log-driving streams in Grays Harbor County. In the past I have done considerable logging on the river and am well acquainted with the timber lands adjacent to and in the vicinity of the Humptulips River, and with the values thereof, and have been purchasing agent for others of timber in that locality of approximately 30,000 acres. I am well acquainted with the timber lands of the Slade Lumber Company covered by the mortgage, and with the value thereof, and in my opinion any logging contract covering said timber, which inures to the owner thereof stumpage at the rate of \$3 per M feet for all timber removed, will insure to the owner the full market value of said timber, and such value can at the present time only be realized for said timber by a logging contract. Under the contract which has been entered into by the receiver, all the risks of a fluctuating log market and other things are taken by the Logging Company, and the receiver is assured under any and all circumstances the full market value of the timber lands, and in addition thereto is insured the benefits of a rising log market. Knowing the amount of the indebtedness of the Slade Lumber Company

and its financial condition and the inability to sell its timber lands for an amount sufficient to pay up its obligations, I consider the logging contract which has been entered into a very beneficial contract for the receiver, the creditors and the owner, and only by means of a logging contract can any equity be possibly saved for the S. E. Slade Lumber Company.

(In other respects the affidavit of Mr. Burrows was substantially the same as the affidavit of William Corkery.) [224]

Affidavit of Eugene France.

I am and for many years past have been a resident of Aberdeen and during all said time have been the owner of extensive timber lands in Grays Harbor County, and during all said time have been and now am familiar with the values of such timber lands. I am familiar with the Humptulips River and with the timber lands tributary thereto and with the values thereof and have been familiar therewith for a good many years. For a long number of years and until recently I was part owner of what is known as the France and Lowe tract of timber, containing about 800 million feet, which timber lies to the east of and in close proximity to the timber lands of the Slade Lumber Company in Township 21, North of Range 9 West. For many years last past I have been interested in various logging operations and am familiar with logging contracts and the cost of logging operations. I am and for many years past have been familiar with the timber lands of the Slade Lumber Company and with the value thereof, and in my opinion any logging contract covering said timber

which returns to the owner stumpage at the rate of \$3 per M feet for all timber to be removed, would result in the owner of such timber receiving the full market value thereof.

Second Affidavit of W. J. Patterson.

I am and for many years past have been connected with logging and lumbering interests in Grays Harbor County, and individually have been and now am the owner of timber lands in said county. I am well acquainted with timber values, including the lands of the Slade Lumber Company. Personally, I have been and now am interested in various logging operations and am familiar with logging contracts and the cost of logging operations and with the market price of logs from time to time on Grays Harbor. In my opinion the Slade timber cannot be sold in the open market on the basis of \$3 per M feet [225] stumpage and only by a logging contract can any such value be realized. Any logging contract which would return to the Slade Lumber Company stumpage at the rate of \$3 per M feet for all timber to be removed, would pay to the owner the full market value of said timber. I have read and am familiar with the logging contract entered into by the receiver, and in my opinion said logging contract is a first-class contract for the receiver and the creditors of the Lumber Company. The contract does not permit any undue gains or profits to the Humptulips Logging Co., and the compensation therein provided is not more than a reasonable compensation to be allowed to the Logging Company. Said contract is particularly favorable to the receiver because he is entitled to all moneys

over and above the cost of operation and the compensation to the Logging Company, which moneys ordinarily go to the logger and which he is entitled to. In my opinion, it will be to the best interests of all the creditors of the Slade Lumber Company and to the Lumber Company itself that said contract be kept in force and carried out. I believe that if logging operations are conducted under said contract for a period of two or three years, the indebtedness of the S. E. Slade Lumber Company will be so materially reduced and the advantages of said timber lands and the operations thereunder as a going concern be made so apparent that it will be possible for the Lumber Company either to refinance its obligations or make possible the sale of its properties at a price more than adequate to pay the indebtedness of the Lumber Company and leave an equity for it.

The financial condition of Humptulips Logging Company is sound and said company is amply able to carry out the terms and conditions of said contract according to its terms. [226]

Affidavit of W. B. Mack.

I am and for many years past have been a resident of Aberdeen, engaged in the logging and lumbering business. For the past fourteen years and up to the 1st day of June, 1916, I was the manager of S. E. Slade Lumber Company and in charge of its logging and lumbering operations in Grays Harbor County. I have had extensive experience in the logging of timber lands and am well acquainted with timber lands in Grays Harbor County and the values thereof, and more particularly with the timber lands of the

Slade Lumber Company and their values, tributary to the Humptulips River. The only outlet to market for the timber lands of the S. E. Slade Lumber Company is the Humptulips River, which now is and for upward of twenty years past has been one of the most extensive and successful logging and driving streams in Grays Harbor County. While I was manager of the Lumber Company and a short time prior to July 12, 1910, the timber lands of the Lumber Company were thoroughly cruised by J. D. Lacey & Company, reputable timber cruisers of Portland, Oregon, which cruise disclosed over 632 million feet of merchantable timber on the lands of the Lumber Company. Since said time, some of the timber has been logged, but after the logging operations had ceased the timber was rechecked by J. D. Lacey & Company and it was found that there remained on said timber lands and now are thereon 532 million feet of merchantable timber. Within the last two and one-half years I made many earnest attempts to sell these timber lands for \$1,250,000, or on the basis of \$2.35 per M feet of merchantable timber on said lands. These lands were also placed in the hands of J. D. Lacey & Company, timber brokers of Portland, Oregon, for sale at said figure, but it has been impossible to sell said lands. In my [227] opinion the sum of \$3 per M feet stumpage is the full market value of said timber, and if the receiver realizes the sum of \$3 per M feet stumpage for said timber, he will realize the full market value thereof. Prior to the foreclosure of the mortgage by Detroit Trust Company and shortly after the operations of the Warren Company ceased

in the summer of the year 1914, I, as manager of the Lumber Company, attempted to enter into a logging contract with certain reputable loggers of Grays Harbor, covering said timber, and the very best terms upon which said loggers would agree to enter into a logging contract, was to log said timber upon the basis of dividing the gross proceeds of the sale of logs on a basis of 50% to the S. E. Slade Lumber Company and 50% to the logger, the Slade Company, however, to pay the driving, booming and towing charges of \$1.25 per M out of its 50%; that such division, considering the market value of logs on Grays Harbor during the past several years, would have realized to the Slade Lumber Company considerably less than \$3 per M feet stumpage. I have read and am familiar with the logging contract entered into by the receiver, and in my opinion said contract is a very fair and reasonable one from the standpoint of the receiver and the creditors, for the following reasons:

A. Out of the proceeds of the sale of logs the receiver is paid first \$3 per M. feet stumpage, which is the full market value of the timber.

B. By no other means can the sum of \$3 per M feet stumpage be realized for said timber, and by means of this logging contract all of the obligations of the Lumber Company will be paid and leave an equity for the Lumber Company.

C. Under said contract the Logging Company furnishes its full logging equipment, which cost on the ground, as affiant is informed and believes, approximately \$150,000; the Logging [228] Com-

pany is obliged to finance the operations, must stand the interest on its investment and the depreciation on its dams, engines, camps, and other equipment, and the loss, if any, on any mill paper taken by it on account of the sale of logs, and is paid its logging expense and compensation out of the sale of logs after the receiver has first been paid \$3 per M, and then only if the funds in the hands of the receiver are sufficient to pay such logging expense and compensation. In my opinion, in view of these things and the fluctuating price of logs on Grays Harbor and the other risks the Logging Company must take under the contract, a sum up to \$1 per M as compensation to the Logging Company is a very reasonable compensation to be paid it under said contract.

D. Because the balance, if any, after stumpage to the receiver, logging expense and compensation to the logger has been paid, goes to the receiver. In all contracts of which I have any knowledge, the entire profit over and above the market value of the stumpage is retained by the logger. Every logger expects to make \$1 per M over and above all expenses, and such sum is the usual and customary profit.

In my opinion the contract entered into amply protects the receiver, the Lumber Company and its creditors. I am not now and never have been a stockholder in S. E. Slade Lumber Company, and since I resigned as manager have had no connection with or any interest in the Lumber Company whatsoever. Ever since the incorporation of Humptulips Logging Company I have been and now am a nominal director in said company, holding one share of stock, and the

position of vice-president. I have never owned, nor do I now own, either directly or indirectly, any interest in the Logging Company, and I have never been nor am I now an employee of said Company, and I have been and now am acting in the capacity of trustee and vice-president purely as a matter of accommodation. [229]

Second Affidavit of Almerion P. Stockwell.

I incorporated Humptulips Driving Company, a public service corporation operating on the Humptulips River, in 1899, and owned and operated the same until 1910, when I sold the company to Warren Company. I owned Grays Harbor Boom Company, a public service corporation operating on the Humptulips River, from 1897 to 1910, when I sold it to the Warren Company. I managed the Boom and Driving Company for the Warren Company and when the latter company sold to Humptulips Logging Company I operated and now am operating said companies for said Logging Company. Since 1897 I have been logging practically continuously on the Humptulips River, logging my own timber and also managing the operations of other companies. I am intimately acquainted with logging operations and the cost thereof. I own and for many years past have owned a large tract of timber tributary to the Humptulips River and in the vicinity of the Slade timber, and am acquainted with the market value of the Slade timber and of timber lands in general. In my opinion any logging contract covering the Slade lands, which assures to the owner thereof stumpage at the rate of \$3 per M feet for all

logs removed, assures to the owner the full market value of said timber, and such value cannot at the present time be realized from a sale of such timber, but only by a logging contract. I have examined the logging contract made by the Receiver and in my opinion it is a fair and reasonable contract from the receiver's standpoint. (The reasons given by affiant for his opinion are substantially the same as the reasons given in the affidavit of W. B. Mack heretofore set out.) Under the contract the receiver is assured on a low log market the full market value of the timber, and at the same time it gives him the benefit of a rising log market; for example, the logs sold by Warren Company to Humptulips Logging [230] Company brought on the 1914 and 1915 market, after deducting the carrying charges, an average price of \$6.72 per thousand. Using these figures to illustrate the present contract, the Humptulips Logging Company, after paying \$3 to the receiver and paying the estimated cost of logging expense, would have made an apparent profit of 12¢ per M. At the present market the Logging Company would receive its full \$1 per M and the receiver would also receive considerable moneys over and above the \$3 stumpage. In my opinion the contract in question amply protects the receiver, the defendant Lumber Company and its creditors. There have been a number of fires in the vicinity of the Slade lands and as late as the year 1915 there was a fire in Section 23, which would have destroyed all the felled timber of the Slade Lumber Company had it not been for the fact that a crew of the Logging Company happened

to be in that vicinity and were able to put out the fire; at that time a number of logs belonging to Cameron & Hoover Logging Co. were destroyed. Said timber lands are not in any well defined fog belt, but such fogs and rains as there are practically cover the entire western part of the State of Washington. In Township 22, North of Range 9 West, there was an extensive forest fire which burned approximately 200,000 acres of timber. The Grays Harbor Boom Co. and the Humpulips Driving Co. are public service corporations and the customary and public charge of said companies and of Humpulips Towing Co. for timber, taking the rate as the Slade timber, is \$1.25 per M. I was manager of Warren Company from April, 1912, until May or June, 1914, when the Warren Co. ceased operations, and I am intimately familiar with the affairs of the Warren Co. during that period. In May, 1914, at a meeting held in the city of Seattle, at which a majority of the stockholders and board of trustees of Warren Co. were represented, the first plan was to cease operations and to permit the company [231] to go into the hands of a receiver and to leave its various creditors, including its laborers, to be paid through receiver proceedings. After further discussion it was decided that Warren Company would turn over all of its assets to any responsible person who would agree to pay off the indebtedness of the Warren Company and release it from its contracts, excepting therefrom, however, indebtedness to stockholders for moneys advanced, and at my request a written option was given by the War-

ren Company to me, which option contained the same terms and provisions as contained in the formal option which was later made to the S. E. Slade Lumber Company. I was unable to handle said option, and said option was also attempted to be handled by J. B. Bridges of Aberdeen, but without success, and thereafter I gratuitously turned said option over to S. E. Slade Lumber Co., and thereupon a formal written option was made by Warren Co. to S. E. Slade Lumber Co. Ever since the incorporation of Humptulips Logging Co. I have been and now am the manager of said company and will have charge of the operations of said company under the contract made by it with the receiver. Immediately after said contract was entered into, operations thereunder were begun and are now being conducted. The logging equipment, dams, skidroads, tools, camps and other personal property purchased from Warren Co. by Humptulips Logging Co. cost on the ground approximately \$150,000, and all of said equipment has been kept and is now in good repair and in first-class workable condition. I have personally cruised a great deal of the Slade timber and I believe that the timber as it now stands will cruise over 500 million feet of merchantable timber.

[232]

Affidavit of H. P. Brown.

Ever since the incorporation of Humptulips Logging Co. I have been and now am the president and sole stockholder of said corporation. Neither S. E. Slade nor S. E. Slade Lumber Company, nor any stockholder of S. E. Slade Lumber Co., has now or at

any time ever had, either directly or indirectly, any interest in Humptulips Logging Co. or in the stock of said company, and neither S. E. Slade, nor any officer of the Slade Lumber Company has been at any time nor now is an officer of Humptulips Logging Co. From about the month of March, 1914, until the 26th day of May, 1916, I was a director of S. E. Slade Lumber Co., holding one share of stock. On May 26, 1916, I resigned as director and transferred the share of stock aforesaid. During said period I also acted as vice-president of the company. In the month of May, 1915, I tendered my resignation as director and vice-president to the Slade Lumber Co., but the resignation was not accepted because the trustees under the third mortgage requested me to continue to act as director and vice-president, and I did so for that reason. Prior to May, 1915, and from about the month of March, 1914, I held an option from S. E. Slade, giving me the right to buy \$100,000 worth of stock at par in the Slade Lumber Company. This option ran for a period of one year, and I became a director and vice-president of the company for the purpose of familiarizing myself with its financial and business conditions. I never exercised the option and the only interest I ever had in S. E. Slade Lumber Co. was as aforesaid.

Humptulips Logging Co. was incorporated on the 15th day of July, 1914, and its Articles filed on the 16th day of July, 1914, the incorporators being myself, W. B. Mack and C. A. Pitchford. The capital stock of the company is \$100,000, of which I sub-

scribed \$99,800, and W. B. Mack and C. A. Pitchford each subscribed \$100. The said Mack and the said Pitchford acted as incorporators of the [233] company as a matter of accommodation to me, and their subscriptions to the capital stock of the company were paid for by me. The said Mack ever since the incorporation of the company has been and now is the vice-president and a director, but the said Mack at no time had nor has he now, either directly or indirectly, any interest in the company. At the time of the incorporation of the company the said C. A. Pitchford was an employee of S. E. Slade Lumber Company, working on a salary in the occupation of scaler, which position I secured for him. Mr. Pitchford is a close friend of my family and immediately after the incorporation of Humptulips Logging Co. he became an employee of said company and ever since has been in its employ, acting in the capacity of secretary and treasurer. The said Pitchford never was an officer of S. E. Slade Lumber Co. and never had any interest in that company whatsoever.

After the option from Warren Company, dated June 19, 1914, had been made and delivered to S. E. Slade Lumber Co., the latter company attempted to finance said option through various parties, and more particularly through the First National Bank of San Francisco, and I was present at the time the application was made to said bank. The First National Bank of San Francisco not only refused to finance said option for the Slade Lumber Company, but stated that it would not give its consent to said

company taking on any further financial obligations, the said Slade Lumber Co. being at that time heavily indebted to First National Bank of San Francisco. While S. E. Slade Lumber Co. was attempting to finance said option it became imperative to pay off the labor liens which had been filed against the logs of the Warren Co., and S. E. Slade personally borrowed the sum of \$20,000 for the purpose of paying off said labor liens, and which liens were in June, 1914, paid off. The S. E. Slade Lumber Co. and S. E. Slade were entirely unable to finance said option or to do anything [234] with it, and thereupon on the 1st day of July, 1914, the Slade Lumber Co. assigned to me the option of June 19, 1914, made by the Warren Co. to the Slade Lumber Co., in consideration of the repayment by me to S. E. Slade of the sum of \$20,000 borrowed by Mr. Slade to pay off the labor liens, and I repaid said sum of \$20,000 to Mr. Slade. Thereafter and on the 15th day of July, 1914, I organized Humptulips Logging Company and caused said option so assigned to me to be assigned to said company, which company thereby became the owner thereof and exercised and carried out the terms and conditions of said option. After the assignment of said option to me by S. E. Slade Lumber Co., neither the latter nor S. E. Slade have had nor have they now, either directly or indirectly, any interest in said option or in the property covered thereby, or in the assets transferred by Warren Co. to Humptulips Logging Co.

At the time Warren Co. ceased operations it had failed to pay to S. E. Slade Lumber Co. two monthly

payments of \$12,500 each, according to the terms of its contract, and said contract further provided for the sum of \$50,000 as liquidated damages for breach of the contract. At the same time Warren Co. had paid to S. E. Slade Lumber Co., in the way of monthly advances, approximately the sum of \$150,000, for which the Warren Co. had received no value, and the Slade Lumber Co. was fearful that under the terms of the contract with the Warren Co. the latter company could recover said sum of \$150,000 paid to the Slade Lumber Co. as aforesaid, and the said S. E. Slade Lumber Co. held as an offset against this amount the sum of \$50,000 liquidated damages and the sum of \$25,000, two monthly advances unpaid by the Warren Co. At the time the negotiations between Warren Co. and Hump-tulips Logging Co. were concluded and the assets transferred, releases were exchanged between Warren Co. and S. E. Slade Lumber Co., the [235] S. E. Slade Lumber Co. relieving the Warren Co. from any claims the said Lumber Co. might have against the Warren Co., and the Warren Co. releasing the S. E. Slade Lumber Co. from any claims of the Warren Co. Said exchange of releases were procured by affiant. On the 12th day of August, 1914, S. E. Slade Lumber Co. formally cancelled the so-called Warren Co. contract. At the time of the transfer of the assets of the Warren Co. to Humptulips Logging Co. it was necessary for Humptulips Logging Co. to procure for one W. T. Cameron a free right of way from S. E. Slade Lumber Co. across certain of its lands, resulting in a loss to the Lumber Com-

pany of approximately \$2,000. In consideration of the free right of way granted by S. E. Slade Lumber Co. to the said Cameron, and of the formal cancellation of the Warren Co. contract, Humptulips Logging Co. executed and delivered to S. E. Slade Lumber Co. a warranty deed covering the SE. $\frac{1}{4}$ of Sec. 23 and the NE. $\frac{1}{4}$ of Sec. 26, all in Township 21, North of Range 9 West, subject to certain reservations and exceptions contained in the deed from Warren Co. to Humptulips Logging Co.

In conformity with the agreement of Humptulips Logging Co. with the Warren Co. it paid off all the creditors of the Warren Co. and performed the contracts by it assumed and agreed to be performed, and in answer to the affidavit of A. J. Morley I deny that the creditors were paid off solely from the proceeds of logs purchased from the Warren Co.

Almerion P. Stockwell ever since the incorporation of Humptulips Logging Co. has been and now is the manager of said company, as well as the manager of Humptulips Driving Co., Grays Harbor Boom Co. and Humptulips Towing Co., and said Stockwell will continue to be the manager of said company, in charge of the logging operations under the contract entered into with the receiver. [236]

In connection with the contract entered into with the receiver, by Humptulips Logging Co., and which has been attacked by First National Bank of San Francisco, it is a fact that long prior to the foreclosure suit of Detroit Trust Co. and in the early part of the year 1916, negotiations were pending between Humptulips Logging Co., represented by my-

self, and the first, second and third mortgages, with reference to the entering into of a logging contract agreeable to all parties, for the logging of the Slade timber. Some time prior to Feb. 10, 1916, I made a proposition to the committee of creditors under the third mortgage, one of said committee being a representative of the First National Bank of San Francisco, which proposition is hereto attached as Exhibit 1. Said proposition was considered by the committee, the First National Bank of San Francisco being represented by James K. Lynch, the vice-president of said bank, and thereafter said committee (James K. Lynch acting for First National Bank of San Francisco) wrote the following letter to me, a copy of which is hereto attached as Exhibit 2. At that time said committee agreed to the reasonableness of paying the Logging Co. the cost of operation, plus \$1 as compensation, and the only reason why the Logging Contract was not entered into at that time was because Detroit Trust Company would not agree to condition "C" set forth in Exhibit 2 hereto attached.

Second Affidavit of H. P. Brown.

Of the creditors secured under the third mortgage the following have been fully paid and are no longer creditors thereunder, to wit, Sudden Estate Company, R. J. Lawson, J. I. Brittain, Slade Shipping Company, Mary I. Slade, S. E. Slade as managing owner of Barkentine "Jane L. Stanford," Harriet C. Frazier Estate and Felix Santallier. [237]

At the time Humptulips Logging Co. took over the assets of Warren Co., besides the labor liens which

had been paid in full, forty-eight creditors of the Warren Co. were paid in full in cash at that time, as well also as the claim of Miner D. Crary, and substantial payments were made to the National Bank of Commerce and Big Creek Timber Co. To secure the release of W. T. Cameron and Cameron-Hoover Logging Co. running to Warren Co. on certain contracts made by the latter company, Humptulips Logging Co. assumed said contracts, by the terms of which Humptulips Logging Co. was required to and did construct for said Cameron and Cameron-Hoover Logging Co. a dam on Widow Creek, together with a skidroad, at a cost of \$10,000, and was required to and did haul approximately 16 million feet of logs for the said Cameron and Cameron-Hoover Logging Co. at a price fixed in the Warren Co. contract at 10¢ per M feet, but which services actually cost Humptulips Logging Co. the sum of 25¢ per M feet.

VI.

The receiver offered in evidence a statement of the total indebtedness due the beneficiaries under the third mortgage, figured to June 1, 1916. Said statement showed that the original indebtedness, with advances and interest, of Welch & Company, American National Bank of San Francisco, Slade-Wells Logging Company, United States National Bank of Portland and Humptulips Logging Co. amounted to \$320,018.24; that the claims of First National Bank of San Francisco, Coats-Fordney Logging Co. and Saginaw Timber Co. amounted to \$261,796.11. Said statement further showed that the total indebtedness

of the Lumber Company covered by the first, second and third mortgages amounted, with interest, on June 1, 1916, to \$1,190,814.35. [238]

VII.

At the time of the hearing there was also offered in evidence Assignment of Warren Company contract with S. E. Slade Lumber Company, dated July 31, 1912, made by Warren Company to Humptulips Logging Company. A true copy of said assignment is hereto attached as Exhibit 3. [239]

Exhibit 1, Attached to Second Affidavit of H. P. Brown—Proposition Made by H. P. Brown to Committee of Creditors.

Logging Company to receive cost plus a dollar for operation but they shall not charge in logging expense depreciation on equipment, nor for selling or for working capital.

Proceeds from log sales to be paid by buyers to Hayes & Hayes Bank at Aberdeen; they to settle each month, first with Detroit Trust Company \$3; second pay Logging Company, and third remit balance to First Federal Trust Company.

Settlements with the Logging Company to be based on the average selling price for each month. After Detroit Trust Company have been paid the full amount of their claim with interest, then the Logging Company shall be paid first, the balance to go to the First Federal Trust Company.

Logging Company to assume responsibility for their proportion of mill paper.

S. E. Slade Lumber Company to have the privilege

of stopping operation six months after contract is signed and subsequent to that date to have the privilege of stopping operations on thirty working days notice. Logging Company to have the privilege of terminating contract at any time the average selling price is too low to meet the requirements of Detroit Trust Company and pay the logging contract agreement.

The above contingent upon a satisfactory arrangement being made for the \$3.00 advance to the Detroit Trust Company.

Note: Logging Company to be endorsers of paper for full amount until Trust Co. is paid, after that only for their proportion. [240]

Exhibit 2, Attached to Second Affidavit of H. P. Brown—Letter Dated February 10, 1916, Signed by J. K. Lynch, P. E. Bowles and A. P. Welch to H. P. Brown, Esq.

THE FIRST NATIONAL BANK.
of San Francisco,

San Francisco, February 10, 1916.

H. P. Brown, Esq.,
City.

Dear Sir:

As we understand the proposition of the Humptulips Logging Company for logging the timber of the S. E. Slade Lumber Company, the Lumber Company will need the co-operation of the Detroit Trust Company in the following respects:

First: To arrange that payment of \$3.00 per thousand from the proceeds of the sales of the tim-

ber shall be received by the Trust Company in satisfaction of the requirements of the mortgage regarding payments to be made in the event of cutting of timber.

Second: So that the bonds now due and those hereafter falling due may be carried without commencing proceedings to foreclose the mortgage securing the same, so long as the logging continues.

Third: So that no foreclosure proceedings shall be commenced upon either mortgage while the logging continues.

If the co-operation of the Detroit Trust Company is obtained in these respects, we will be willing for the Lumber Company to enter into an agreement with the Humptulips Logging Company for logging its timber upon the general terms outlined by you, upon the following conditions:

(a) All of the creditors of the Lumber Company to agree to forbear bringing any suit upon their claims while the logging continues, they, in turn, to be protected against the Statute of Limitations.

(b) The Lumber Company, with the consent of the creditors, or creditors holding twenty-five per cent in amount of the indebtedness of the Lumber Company, other than that secured by the mortgages to the Detroit Trust Company, to have the right to terminate the logging contract at any time after the expiration of six months from the date of signing the contract, by giving thirty working days notice.

(c) All proceeds of log sales to be paid to Hayes & Hayes Bank at Aberdeen, they to make payment of \$3.00 per thousand to the Detroit Trust Company

and pay the Logging Company, and the balance to be paid to the First Federal Trust Company, San Francisco, for the benefit of creditors other than those whose demands are secured by the two mortgages to the Detroit Trust Company; but the interest payable to the Detroit Trust Company to be paid therefrom.

(d) The terms of the agreement for logging to be satisfactory to the creditors.

Very truly yours,

JAMES K. LYNCH,

P. E. BOWLES,

A. P. WELCH,

Treas. Welch & Co. [241]

Exhibit 3, Attached to Second Affidavit of H. P. Brown—Assignment of Contract.

ASSIGNMENT OF CONTRACT.

WARREN COMPANY, a corporation of Aberdeen, Washington, for a valuable consideration to it in hand paid by HUMPTULIPS LOGGING COMPANY, a corporation of Aberdeen, Washington, the receipt whereof is hereby acknowledged, does by these presents, assign, transfer and set over unto said Humptulips Logging Company, a corporation, and to its successors and assigns, that certain contract dated on the 31st day of July 1912, and entered into by and between S. E. Slade Lumber Company, a corporation organized under the Laws of the State of California but doing business within the State of Washington as a foreign corporation, as the party of the first part, and Warren Company, a corporation under the laws of the State of Washington, as the party of the second part; by the terms of which con-

tract the said S. E. Slade Lumber Company did give to the said Warren Company, the right and privilege of cutting, removing and marketing all of the merchantable timber located, being, standing or fallen upon the lands of the S. E. Slade Lumber Company, situated in Township 21, North of Range 9, West of the Willamette Meridian, in Chehalis County, Washington, said lands being more particularly described in said contract, and which contract contains numerous terms and conditions under or by which the said Warren Company was to log the said timber of the S. E. Slade Lumber Company, and which contract consists of eighteen typewritten pages, and the same being hereto attached and made a part of this assignment. And the said Warren Company, for said consideration, does hereby transfer and relinquish unto the said Humptulips Logging Company, a corporation, all its right, title, claim and interest in and to said contract and the whole thereof.

IN WITNESS WHEREOF, the said WARREN COMPANY has caused this instrument to be executed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed, on this 27th day of July, 1914.

WARREN COMPANY,
By (Signed) J. B. BRIDGES,
Vice-president.

Attest: (Signed) J. F. EISWERTH,
Secretary.

State of Washington,
County of Chehalis,—ss.

On this 27th day of July, 1914, before me personally appeared J. B. Bridges and J. F. Eiswerth, to me known to be the vice-president and secretary respectively of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signed) THEO. B. BRUENER,
Notary Public in and for the State of Washington,
Residing at Aberdeen. [242]

*In the District Court of the United States, for the
Western District of Washington, Southern
Division.*

No. 67-E.

DETROIT TRUST COMPANY et al.,
Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY et al.,
Defendants.

Praeceptum for Additional Transcript.

To the Clerk of the Above-entitled Court:

Please include as a part of the transcript on appeal in this case the order of the Court made *sua sponte*, and entered on the 14th day of December, 1916, permitting the beneficiaries under the third mortgage to appear in this cause; also the clerk's minutes showing the exception taken to said order by the attorney for the plaintiff in open court on the 18th day of December, 1916.

WALLACE McCAMANT,

Attorneys for Plaintiffs.

BRIDGES & BRUENER,

Attorneys for Humptulips Logging Company et al.

(Filed Dec. 30th, 1916.) [243]

*In the District Court of the United States, for the
Western District of Washington, Southern
Division.*

IN EQUITY—No. 67.

DETROIT TRUST COMPANY and ALEXANDER

McPHERSON, as Trustees.

Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, WILLIAM
T. CAMERON, CAMERON-HOOVER LOG-
GING COMPANY, HUMPTULIPS LOG-
GING COMPANY, FIRST FEDERAL
TRUST COMPANY and MILTON R.
CLARK, Trustees, SLADE-WELLS LOG-
GING COMPANY,

Defendants.

Order Allowing First National Bank of San Francisco et al., to Intervene, etc.

This cause came on further to be heard, plaintiffs appearing by Messrs. Snow, McCamant and Bronaugh, their solicitors, and the defendants S. E. Slade Lumber Company, Humptulips Logging Company, Slade-Wells Logging Company appearing by Theo. B. Bruener, and the defendants First Federal Trust Company and Milton R. Clark, trustees, appearing by Jared How and James B. Kerr, their solicitors.

And it appearing that heretofore, to wit, on the 16th day of September, 1916, a bill was filed in this court wherein First Federal Trust Company of San Francisco and Milton R. Clark as trustees were plaintiffs and said S. E. Slade Lumber Company, First National Bank of San Francisco, The American National Bank of San Francisco, Welch and Company and others were defendants, in which bill the plaintiffs therein applied for and sought the instructions of this court as to the duties of such plaintiffs as trustees under a certain mortgage or deed of trust dated June 2, 1915, executed by S. E. Slade Lumber Company to the First Federal Trust Company of San Francisco and Milton R. Clark as trustees; [244]

And it appearing that upon said bill an order was entered by this court in words and figures as follows, to wit:

“In the District Court of the United States for the Western District of Washington, Southern Division.

IN EQUITY—No. 68-E.

FIRST FEDERAL TRUST COMPANY OF SAN FRANCISCO and MILTON R. CLARK, as Trustees,

Plaintiffs,

vs.

S. E. SLADE LUMBER COMPANY, THE FIRST NATIONAL BANK OF SAN FRANCISCO, THE AMERICAN NATIONAL BANK OF SAN FRANCISCO, WELCH AND COMPANY, COATS-FORDNEY LOGGING COMPANY, SAGINAW TIMBER COMPANY, SLADE-WELLS LOGGING COMPANY, UNITED STATES NATIONAL BANK OF PORTLAND, OREGON, HUMPTULIPS LOGGING COMPANY, SUDDEN ESTATE COMPANY, R. J. LAWSON, J. I. BRITTAIN, FELIX SANTALLIER, SLADE SHIPPING COMPANY, MARY I. SLADE, S. E. SLADE, as Managing Owner of the Barkentine “JANE L. STANFORD,” and HARRIET C. FRAZER ESTATE,

Defendants.

Order.

This cause came on duly to be heard before the Court upon the bill of complaint herein, plaintiffs

appearing by Jared How and James B. Kerr, their solicitors, S. E. Slade Lumber Company appearing by Theodore B. Bruener, its solicitor, First National Bank of San Francisco appearing by E. C. Hughes, its solicitor, Coats-Fordney Logging Company and Saginaw Timber Company appearing by John C. Hogan, their solicitor;

And it was duly made to appear to the Court by satisfactory proof that the defendants Sudden Estate Company, R. J. Lawson, J. I. Brittain, Felix Santallier, Slade Shipping Company, Mary I. Slade, S. E. Slade, as managing owner of the Barkentine 'Jane L. Stanford,' and Harriet C. Frazer Estate have been paid in full the amount of their several claims described in the bill of complaint herein, and that none of said last-named defendants claim or have any interest in or to the property described in the complaint herein;

And it was further made to appear to the Court that none of the defendants who have appeared herein have filed any answer or other pleading denying any of the averments of the complaint;

And it was duly made to appear to the Court that all of the averments of the complaint herein are true;

Thereupon the prayer of the plaintiffs for instructions with respect to the duties and obligations of the plaintiffs as trustees [245] under the deed of trust dated June 2, 1915, of which a copy is attached to the bill of complaint herein was duly submitted to the Court by counsel for such plaintiffs, and upon such submission counsel for the First National Bank of San Francisco, Coats-Fordney Logging Company

and Saginaw Timber Company offered statements, evidence and argument, and counsel for said S. E. Slade Lumber Company, The American National Bank of San Francisco, Welch and Company, Slade-Wells Logging Company, United States National Bank of Portland, Oregon, and Humptulips Logging Company offered statements, evidence, and argument, and the Court being fully advised in the premises, does now

ORDER, ADJUDGE AND DECREE as follows:

First. That the First Federal Trust Company of San Francisco and Milton R. Clark, as trustees under the mortgage or deed of trust dated June 2, 1915, attached to and a part of the bill of complaint herein are under no obligation or duty, in the absence of unanimous instructions from George A. Kennedy, P. E. Bowles and A. P. Welch, named in the agreement of April 30, 1915, of which a copy is attached to the bill of complaint herein, and also in said mortgage of June 2, 1915, their successor or successors, to defend against the foreclosure of the mortgage dated September 1, 1910, made by S. E. Slade Lumber Company to Detroit Trust Company and Alexander McPherson as trustees, or against the foreclosure of the mortgage dated March 1, 1915, made by S. E. Slade Lumber Company to Detroit Trust Company, which respective mortgages are referred to and described in the bill of complaint herein, nor, in the absence of such instructions, are the plaintiffs herein under any duty or obligation to undertake the foreclosure of the mortgage of June 2, 1915, of which

a copy is attached to and made a part of the bill of complaint herein.

Second. That the plaintiffs herein, as trustees under said mortgage of June 2, 1915, in the absence of unanimous instructions from said George A. Kennedy, P. E. Bowles and A. P. Welch, their successor or successors are under no duty or obligation to join with The First National Bank of San Francisco, Coats-Fordney Logging Company and Saginaw Timber Company, or either of them, in any petition or proceeding to set aside the order heretofore entered by this Court in that suit pending herein for the foreclosure of the mortgage so made by S. E. Slade Lumber Company to Detroit Trust Company and Alexander McPherson as trustees, under date of September 1, 1910, whereby Alexander McPherson was appointed receiver of the property of S. E. Slade Lumber Company covered by said mortgage of September 1, 1910, or for the purpose of setting aside the order of this Court in said foreclosure suit, authorizing the execution of that certain contract between said receiver and Humptulips Logging Company for the cutting of the timber upon the mortgaged premises; or to take any step or proceeding in such matters or either thereof in their own separate behalf as such trustees.

Third. That the defendants The First National Bank of San Francisco, The American National Bank of San Francisco, Welch and Company, Coats-Fordney Logging Company, Saginaw Timber Company, Slade-Wells Logging Company and United States National Bank of Portland, Oregon, have such an

interest in and to the security created by said mortgage of June 2, 1915, a copy of which is attached to the bill herein, notwithstanding the provisions of said mortgage with respect to the power, authority, duties and obligations of the plaintiffs herein, as justify and make proper the intervention of [246] said defendants last above named, and each thereof, in the two suits pending in this court and described in the bill of complaint herein, or in either thereof, namely, the suit pending herein for the foreclosure of the mortgage given under date of September 1, 1910, by S. E. Slade Lumber Company to Detroit Trust Company and Alexander McPherson, trustees, and the mortgage dated March 1, 1915, given by S. E. Slade Lumber Company to Detroit Trust Company; and said defendants last above named are and each of them is hereby authorized and permitted to apply to the court in said two suits so pending herein for the foreclosure of said two mortgages of September 1, 1910, and March 1, 1915, or in either thereof, for orders permitting them to be made parties thereto.

Fourth. That the Court hereby retains jurisdiction of this cause and reserves the right to make from time to time such further order or orders as it may hereafter be advised and further from time to time to instruct plaintiffs herein as to their duties and obligations under said mortgage or deed of trust of June 2, 1915, as to the Court shall seem proper.

By the Court.

Judge.

Dated."

NOW, THEREFORE, in order to preserve the rights of all parties herein and to afford full and complete protection to each and all of the beneficiaries of the security created by said deed of trust of June 2, 1915, mentioned in the order so entered upon the bill for instructions so filed in this Court by First Federal Trust Company of San Francisco and Milton R. Clark as trustees, it is by this Court *sua sponte*

ORDERED, ADJUDGED AND DECREED that First National Bank of San Francisco, Coats-Fordney Logging Company, Saginaw Timber Company, The American National Bank of San Francisco, Welch and Company, Slade-Wells Logging Company and United States National Bank of Portland, Oregon, and each of them, be and they are hereby authorized and permitted to intervene herein and become parties defendant herein, and upon becoming such parties defendant they and each of them are hereby authorized and permitted in their own joint or several right and in the right of each of them, to present to this Court such defense as they shall be advised to be proper to the foreclosure sought herein of the mortgage described in the bill of complaint in this cause and to interpose such objections as they may be advised are proper to be [247] brought to the attention of this Court with respect to the order heretofore entered herein appointing a receiver in this cause and to the order heretofore entered herein authorizing the receiver heretofore appointed to enter into a contract with the Hump-tulips Logging Company for the cutting of the tim-

ber standing upon the premises covered by the mortgage sought to be foreclosed herein, or to any other order or proceeding heretofore made or had herein or hereafter to be so made or had.

This order is made for the purpose of permitting each and all of the several beneficiaries of the security created by the mortgage or deed of trust of June 2, 1915, referred to in said order so entered upon the bill for instructions of First Federal Trust Company and Milton R. Clark, trustees, to take such action in this court and by review on appeal, if they, or any of them, be so advised, as will afford to said parties last above named full and complete opportunity for hearing and protection otherwise than through their representation by First Federal Trust Company and Milton R. Clark as trustees.

By the Court,
EDWARD E. CUSHMAN,
Judge.

Dated December 14, 1916.

(Filed Dec. 14, 1916.) [248]

*In the United States District Court, for the Western
District of Washington, Southern Division.*

Extract from Clerk's Minutes.

Monday, December 18, 1916.

The Court convened at 9:30 A. M., pursuant to adjournment, Honorable EDWARD E. CUSHMAN, U. S. District Judge, presiding.

No. 67-E.

DETROIT TRUST COMPANY et al., etc.,

vs.

S. E. SLADE LUMBER COMPANY et al.

Earl C. Bronaugh, Esquire, in behalf of the complainants, excepts in open court to the entry of the order of the court *sua sponte* and filed herein on the 14th day of December, 1916.

Exception allowed. [249]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing and attached is a full, true and correct transcript of the record and proceedings in the case of Detroit Trust Company and Alexander McPherson, as Trustees, plaintiffs, versus S. E. Slade Lumber Company, William T. Cameron, Cameron-Hoover Logging Company, Humptulips Logging Company, First Federal Trust Company and Milton R. Clark, Trustees, Slade-Wells Logging Company, Defendants, and The First National Bank of San Francisco, Coats-Fordney Logging Company and Saginaw Timber Company, Intervenors, as required by stipulation of counsel and praecipe for additional transcript filed

and shown herein, and as the originals thereof appear on file and of record in my office in said District of Tacoma, except that the Agreed Statement of the Case, shown herein, and stipulation with reference to the same attached thereto with certificate and approval of the Judge thereon, are original papers and are transmitted herewith as part of the record in pursuance of said stipulation and approval of the Judge.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the appellants and appellees, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.)	
for making record, certificate or	
return for appellants, 685 folios at	
15¢.....	\$102.75
Certificate of clerk to transcript, 3	
folios at 15¢.....	.45
Seal to said certificate.....	.20
Clerk's fees (Sec. 828, R. S. U. S.)	
for making record and return on	
praecipe for additional transcript	
by appellees, 20 folios at 15¢....	3.00

ATTEST MY HAND and the seal of the said court
at Tacoma, in said District, this 2d day of January,
A. D. 1917.

[Seal]

FRANK L. CROSBY,

Clerk.

By F. M. Harshberger,

Deputy. [250]

[Endorsed]: No. 2912. United States Circuit
Court of Appeals for the Ninth Circuit. The First
National Bank of San Francisco, Coats-Fordney Log-
ging Company and Saginaw Timber Company, Ap-
pellants, vs. Detroit Trust Company and Alexander
McPherson, as Trustees, and S. E. Slade Lumber
Company, William T. Cameron, Cameron-Hoover
Logging Company, Humptulips Logging Company,
First Federal Trust Company and Milton R. Clark,
Trustees, Slade-Wells Logging Company, Appellees.
Transcript of the Record. Upon Appeal from the
United States District Court for the Western Dis-
trict of Washington, Southern Division.

Filed January 5, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.